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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS  
February 9, 2005  
LB 408, 233, 290, 401, 473, 477

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 9, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding the confirmation of gubernatorial appointments and LB 408, LB 233, LB 290, LB 401, LB 473, and LB 477. Senators present: DiAnna Schimek, Chairperson; Pam Brown, Vice Chairperson; Carroll Burling; Deb Fischer; Chris Langemeier; Mick Mines; Rich Pahls; and Roger Wehrbein. Senators absent: None.

SENATOR SCHIMEK: Good afternoon, ladies and gentlemen, and welcome to the hearings of the Government, Military and Veterans Affairs Committee. We're happy to have you with us today. I'd like to begin the hearing by introducing the senators who are members of the Government Committee, and I'll start over at my right with Senator Rich Pahls of Omaha; to his left is Senator Carroll Burling of Kenesaw, Nebraska; to my right is the committee counsel, Christy Abraham; I'm DiAnna Schimek and I chair the committee, I'm from Lincoln; to my left is Sherry Shaffer, who is the committee clerk; to her left is Senator Roger Wehrbein of Plattsmouth; to his left is Senator Mick Mines of Blair; to his left is Senator Chris Langemeier from Schuyler; and to his left is Senator Deb Fischer of Valentine. We are going to take the bills in the order in which they were posted, and we will first do the two gubernatorial appointments and then LB 408, LB 233, LB 290, LB 401, LB 473, and LB 477. For anybody who hasn't been here before, we have the bill introduced, then we take proponents, then opponents, and then those who wish to testify in a neutral capacity. There are sheets to sign in on, which are at the door; they look like this. Fill them out and put them in the box when you are ready to testify. Please tell us your name at the beginning of your testimony, and spell your name for purposes of transcription. And if you have a cell phone, please turn it off now. Don't do like I did this summer and tell everybody to turn their cell phones off and then forget to turn my own off; that was very embarrassing. And I guess that's about all. Oh, if you have anything that you would like to have distributed to the committee but you've only got one copy, we can make copies and do that for you. So with that, I believe we are ready to begin. And our first

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 2

gubernatorial appointment to consider is Stuart MacTaggart,  
Department of Aeronautics. Welcome to the Government  
Committee.

CONFIRMATION HEARING ON  
STUART MacTAGGART TO THE  
DEPARTMENT OF AERONAUTICS

STUART MacTAGGART: (Exhibit 1) Thank you, Senator.

SENATOR SCHIMEK: You may begin, and just tell us a little  
bit about yourself and why you think you're qualified for  
this job and anything else that you would like to add, and  
then the committee will see if they have any questions.

STUART MacTAGGART: Okay. I guess as cool as it is outside,  
this hot seat feels pretty good right about now. I'm one of  
those kids that fell in love with firemen and aviators,  
cops, and that sort of thing, at an early age, and I was  
fortunate enough to pursue it. When I completed college,  
then I was commissioned in the Air Force and pursued a  
career both as a military officer, a staff officer, a  
commander on a couple of occasions, and was very fortunate  
to be able to continue to fly and staying active in that  
role. Even though the flying portion of it is the fun part  
and the enjoyable part, I found probably the most satisfying  
part was working with people. And I think that's probably  
my primary incentive to apply for this job. So I applied  
for it, and fortunately the Governor felt that he saw some  
qualities other than an occasional rough landing, and we  
went forward from there. I'd be happy to answer any  
specific questions. The department presently is involved in  
a number of activities. Really close to the top of that  
list is our attempt to work very closely with the Department  
of Economic Development and play our role in that as a cog  
in that wheel. We're simply a very small organization  
spread out among about five different locations, and we play  
a very pivotal role really in getting commercial traffic,  
hospital and outreach programs into our communities, as well  
as hopefully really beefing up the economic development in  
our community, including Blair. One of these days soon we  
hope to have a really nice one for you. Are there any  
questions I can answer?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 3

SENATOR SCHIMEK: Any questions? Yes, Senator Burling has a question.

SENATOR BURLING: Thank you for appearing before us today, and congratulations on your appointment.

STUART MacTAGGART: Thank you, sir.

SENATOR BURLING: You mentioned a little bit about economic development, and you mentioned in your letter to us that you were quite familiar with Nebraska and the people and the demographics, and so on and so forth. Do you want to elaborate on any other challenge, what's the greatest challenge you see today, or anything like that?

STUART MacTAGGART: Probably the greatest challenge, as I see it, is trying to prioritize really, really, critical, crucial needs with what some of the federal regulations require of us. By that, I mean it's very expensive to develop an airport. Airport layout plans are expensive; consultants are expensive. Some of the smaller communities that don't have that kind of money find that to be a real challenge. That's an area that I anticipate working very hard for. Referencing the people, I've been fortunate in that I've flown into most of the airports in this state. We have about 88 now. And I've had coffee around the morning table with a lot of the folks that run the airports, from the mechanics on up, so I think I have some of the...a pretty good feel for what their true needs are. Now matching those with the capability to support those needs for economic development is going to be quite a challenge, needless to say.

SENATOR BURLING: Thank you.

STUART MacTAGGART: Yes, sir.

SENATOR SCHIMEK: Senator Wehrbein has a question.

SENATOR WEHRBEIN: Yeah, thank you for coming. You've been a pilot for awhile for the Governor, is that right?

STUART MacTAGGART: Yes, I have.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 4

SENATOR WEHRBEIN: That's how you've bounced in and out of some of these, is that right?

STUART MacTAGGART: I'd prefer not to use that term, but, yes, sir, that's true. (Laughter)

SENATOR WEHRBEIN: This is off the top of my head, but I was just thinking, as we have 88 airfields in the state, or where you've been out...is it a dilemma or will be a dilemma or can it be a dilemma as to what airports are going to, let's call it thrive, or where we're going to spend our money versus those that may...? Is that anything under your jurisdiction, or do you worry...do you think about that, maybe? I don't know whether you worry about it, but think about that?

STUART MacTAGGART: Yes, sir. You hit on a very key topic. That's an everyday concern. We work very closely with the five commissioners that are, of course, Governor appointees, and prioritizing those interests is paramount. We would like to have an airport within 30 minutes of each and every community. Realistically, with budget constraints, we probably can't do that. We'll be looking at an airport day after tomorrow, at a potential airport day after tomorrow, in an area that would be very nice to have an airport. We have to be very cautious when we discuss that particular airport, that we're not starting a slippery slope, okay. Airport layout plan may go as much as \$80,000. Putting that strip in may be \$8 million. And it may be a period of a number of years, and we want to make sure that we don't forward inferred commitments that we can do something we can't. So, yes, in answer to your question, that's very important.

SENATOR WEHRBEIN: Thank you.

SENATOR SCHIMEK: Senator Mines.

SENATOR MINES: Thank you, Madam Chair. Mr. MacTaggart, thanks for being here; congratulations on the appointment. To the general population, I think we understand passenger transportation and we understand that there are holes throughout the state that need...or, yeah, I think probably

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 5

need additional air transportation. But general aviation is the question I've got. Do you see general aviation as an increasing business or an increasing industry, or is general aviation on the decline just nationwide?

STUART MacTAGGART: Nationwide, I think this is going to depend largely on where we go with the security concerns, now quite frankly.

SENATOR MINES: Ah.

STUART MacTAGGART: We've made some very good efforts in that area. Between the security and the price of petroleum are definitely going to have impacts. Now to give you an idea, yearly we hold an aviation symposium at Kearney, and we had record numbers this year--and that was just last month.

SENATOR MINES: Wonderful.

STUART MacTAGGART: So the interest is there. The young kids that are interested in aviation continue to be. We're working closely with the University of Nebraska, Omaha and Kearney primarily, with some of our programs for youngsters to key them in on some of these programs. Another issue that affects general aviation is the insurance industry, needless to say. And insurance has gotten extremely high, to the extent we're almost in between a rock and a hard place in the department, because fortunately we have very experienced pilots, but very experienced pilots sometimes come with age, you know.

SENATOR MINES: Yeah, that's true.

STUART MacTAGGART: And we would like very much to have some youngsters; some people that are little bit younger.

SENATOR MINES: Thank you. Thanks for your testimony.

STUART MacTAGGART: That's not a politically correct way of putting that, Senator, but...

SENATOR MINES: (Laugh) Nicely done.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 6

SENATOR SCHIMEK: Seeing no further questions, I just have a comment or two. You've actually...you were appointed in October, so you've actually been on the job how long?

STUART MacTAGGART: Actually, it should say August.

SENATOR SCHIMEK: Earlier than that?

STUART MacTAGGART: August.

SENATOR SCHIMEK: August?

STUART MacTAGGART: Yes.

SENATOR SCHIMEK: Oh, I know what it is. We received the notice of this in August--or in October.

STUART MacTAGGART: I've been in there for just about five months.

SENATOR SCHIMEK: Okay. Well, you have a very impressive resume. So thank you very much for being with us.

STUART MacTAGGART: Well, we're working with super people, and of course that's the key to success.

SENATOR SCHIMEK: Good. Thank you so much.

STUART MacTAGGART: Thank you.

SENATOR SCHIMEK: Are there those who wish to appear in favor of the appointment of Stuart MacTaggart? Any proponents? Any opponents? Anyone who wishes to testify against this appointment? Any in a neutral capacity? Seeing none, that will close the hearing on the appointment of Mr. MacTaggart, and we will go to the next hearing on the next appointee. This is Mr. Sam Seever, and he is being reappointed to the State Personnel Board.

CONFIRMATION HEARING ON  
SAM SEEVER TO THE  
STATE PERSONNEL BOARD

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 7

SAM SEEVER: (Exhibit 1) Senator Schimek, members of the committee, my name is Sam Seever. I am a Nebraska native, educated at Nebraska Wesleyan, and a law degree from the University of Nebraska College of Law. For the last 23-plus years, I've worked for MDS Pharmaservices in Lincoln, and its successor company, Harris Laboratories. My current title is vice president of legal services. During that time, I've spent a lot of my time involved in human resource issues, and, in fact, for a period of about six or seven years, managed the human resources effort at Harris Laboratories. I've been on the State Personnel Board, as far as we could determine this morning, for about nine years, and have served as chairman for approximately the last five. And with that, I'd be happy to answer any questions you might have.

SENATOR SCHIMEK: Thank you, Mr. Seever. I'm kind of wondering, you used to be a constituent of mine. Are you still? I can't tell by the address.

SAM SEEVER: I think I am still your constituent.

SENATOR SCHIMEK: I think you are, too. Okay. Just wanted to clarify that. Are there questions? Yes, Senator Mines.

SENATOR MINES: You got one vote; nice job. Sam, very impressive resume, and certainly make quite an addition, good. What was the Jaycee thing?

SAM SEEVER: The...which part of it?

SENATOR MINES: Oh, yeah. You had two legs in the Jaycees. What was that?

SAM SEEVER: Well, I served as the president of the Nebraska Jaycees in 1973 and 1974. God, that's a long time ago.

SENATOR MINES: Um-hum. You are old.

SAM SEEVER: Yeah, thank you. I really am. That just kind of slipped out, Senator, otherwise, I wouldn't have given you the years. And then I spent a year on the National Executive Committee. There was a period of time when I was practicing law in a small community, and decided that wasn't

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military  
and Veterans Affairs  
February 9, 2005  
Page 8

necessarily what I wanted to do for the rest of life, or at least I didn't think it was. So I went to work for the U.S. Jaycees. We had an office for them in Birmingham, Alabama, and then was in their national headquarters in Tulsa for two years.

SENATOR MINES: Good for you. Great experience.

SAM SEEVER: Yeah, it was a great experience.

SENATOR MINES: Thanks.

SENATOR PAHLS: How is the town of Superior?

SAM SEEVER: Pardon?

SENATOR PAHLS: How is the town of Superior?

SAM SEEVER: You know, as far as I know, it's fine. I talked to one of my friends down there. It, like a lot of other communities, has suffered the pains of industry leaving and contraction, but I think it seems to be making some strides back, and I think it's doing fairly well at this point.

SENATOR SCHIMEK: Any other questions? I just have one, I guess, and it's...maybe you don't even remember this, but it was on your form that you filled out for this appointment, and maybe this was the form you filled out the first time.

SAM SEEVER: Yeah, I haven't seen that form for a long time, Senator, so.

SENATOR SCHIMEK: Yeah. But it asked you...under where it says, please list additional supportive information about yourself, experiences, background, awards, honors, et cetera...and I'm not sure what this means. It says area of interests, limit it to two. And it has ag/environment, education/cultural, health/safety/human services, legal/law enforcement, and other. And you've checked health/safety and human services; and legal and law enforcement; but not ag and environment; which I guess I thought maybe that would be one you would check.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military                    LB 408  
and Veterans Affairs  
February 9, 2005  
Page 9

SAM SEEVER:    You know, I can't remember the process I went through then.

SENATOR SCHIMEK:    You don't recall.    That's okay, that's okay.    Seeing no further questions, thank you very much for being with us.

SAM SEEVER:    Thank you.

SENATOR SCHIMEK:    We appreciate it.    Are there those who wish to appear in support of the appointment of Mr. Seever? Any in favor? Any opposed? Any in opposition? Any in a neutral capacity?    Seeing none, that will conclude the hearing on the appointment of Sam Seever to the State Personnel Board.    And with that we will turn to LB 408, and Senator Flood is here to provide us some information about his bill.

LB 408

SENATOR FLOOD:    Thank you, Senator Schimek and members of the committee.    For the record, my name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District. And today I'm presenting to you LB 408.    You know, in times of war, our troops have more than earned their right to vote, as they protect our freedoms and the freedoms of others around the world.    Unfortunately, our troops are often in harm's way, and it should come as no surprise they're often nowhere near a post office, nor do many of them enjoy regular mail.    The good news is that they often have access to e-mail and fax machines.    This bill provides for the receipt and return of absentee ballots by electronic means for those citizens covered by the federal Uniformed and Overseas Citizen Absentee Voting Act, including all U.S. military, civilian contractors, and missionaries stationed in another country.    Currently, the voter has only 45 days to receive, vote, and return an absentee ballot. With inconsistent and inadequate mail service, as we have in Iraq or Afghanistan, it may not be possible to return the ballot in time to be counted.    Not only does the electronic election technology move faster, but oftentimes our troops only have access to e-mail.    It just makes sense to use this high-speed technology to aid voters overseas.    The second

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 408  
and Veterans Affairs  
February 9, 2005  
Page 10

provision of this bill would allow the children of the citizens covered under the Uniformed and Overseas Citizen Absentee Voting Act to register in the same Nebraska jurisdiction as their parents, even if they have never lived in Nebraska. For example, members of the U.S. military and their families are often stationed in other countries for many years. This bill would enable the children of registered Nebraska voters who serve our country in these capacities overseas to vote in Nebraska even if they have never lived in our state. Currently, 13 other states have provisions extending the Uniformed and Overseas Citizen Absentee Voting Act to children, yet Nebraska does not. Voting is so important, and it's an important part of being an American and a Nebraskan. I believe that LB 408 would increase the accessibility of voting for all qualified Nebraska citizens, and as I mentioned, the children of those that qualify under that act. I thank you for your time. And one final note: One of the questions I had when I reviewed this bill as it was presented to me by the Secretary of State was, would the members of our military be comfortable voting on a nonsecret ballot? Obviously their name would be attached and certain precautions would have to be taken if it was sent by e-mail or fax. This is so important, the right to vote, that they're willing to waive that right of a secret ballot so that it may be counted in our elections in this state. And I think that speaks volumes for the men and women of our armed forces that want to vote, especially those overseas. Thank you.

SENATOR SCHIMEK: Thank you, Senator Flood. Are there questions? Anybody have any questions? Yes, Senator Burling.

SENATOR BURLING: Senator Flood, on the children registration in Nebraska jurisdictions same as their parents, so you have parents that are registered to vote in Nebraska, but they raised their children someplace else, then that child, when they become 18, is that the intent, when they become 18, could...

SENATOR FLOOD: When they would qualify as a Nebraska voter, yes.

SENATOR BURLING: ...could live somewhere else, but register

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 408  
and Veterans Affairs  
February 9, 2005  
Page 11

in Nebraska. And would they have to do that before a certain age, or could they do that when they're 30 or 40 or...?

SENATOR FLOOD: Anytime after you've reached the age of 18, if they met the requirements of our statute with regard to voting, I believe that they could register. I guess to make it easier, my wife's mother and father, her dad was in the military in Germany, and if they still lived in Germany and she was...well she's 28 now, 29, she could register in Platte County, Nebraska, where they are from, and vote in Platte County elections on the federal and state and local ballots. So this would allow her to do that if she was living in Germany with them at this time, after the age of 18.

SENATOR BURLING: Okay.

SENATOR FLOOD: As long as she qualified as an eligible Nebraska voter.

SENATOR SCHIMEK: Senator Flood, I'm not sure I understood what you just said. Your wife did register?

SENATOR FLOOD: No. If she was over the age of 18, was not married to me, and not living in the United States; if she was in Germany, with her parents...

SENATOR SCHIMEK: She could have...

SENATOR FLOOD: Could have; yes.

SENATOR SCHIMEK: ...according to this bill. I misunderstood. I thought you said she did.

SENATOR FLOOD: No.

SENATOR SCHIMEK: Okay.

SENATOR FLOOD: She probably would rather be in Germany some days. (Laugh)

SENATOR SCHIMEK: Okay. Well, I like the second part of the bill. And as you may or may not know from visiting with

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 408  
and Veterans Affairs  
February 9, 2005  
Page 12

Secretary Gale, I had some problems with the first part of the bill when we were discussing it in the Vote Nebraska Initiative, because I worry about the maybe undue pressure somebody might get to submit these ballots, or I do worry about the lack of secrecy, and I understand the right to waive your right to secrecy; I understand that. I've just always been very uneasy about this. But you said something about the fact that somebody could e-mail their ballot. Would they then have to have the option of a scanning machine to put that ballot into their computer some way? And I'm not sure exactly what that e-mailing a ballot would entail.

SENATOR FLOOD: And that's a good question. The bill is written in such a way that it would allow the Secretary of State to prescribe a certain method if he in his own discretion found one more advantageous than another. So if Mr. Gale, in his capacity as Secretary of State, would want to use e-mail, his office would have to take steps to make sure that that e-mail ballot was done in an appropriate way. And whether they would use some type of a form or how they would use electronic mail, I don't think that's prescribed in the bill, but it would be up to his discretion.

SENATOR SCHIMEK: I see. Okay, thank you. Any other questions? Seeing none, thank you very much.

SENATOR FLOOD: Thank you very much. May I waive closing, too?

SENATOR SCHIMEK: Yes, you may. Thank you.

SENATOR FLOOD: Thank you.

SENATOR SCHIMEK: We will now take proponents of the bill, and I think I see somebody who would like to testify on this bill.

JOHN GALE: Madam Chairman, members of the committee, John Gale, Secretary of State for the state of Nebraska, here to testify in support of Legislative Bill 408. This is one of the bills that we consider to be of really considerable national significance and importance with the number of National Guard, Reserve, regular Army and other

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 408  
and Veterans Affairs  
February 9, 2005  
Page 13

military personnel overseas, in addition just to the general number of people who are stationed overseas, whether with civilian contractors or as missionaries or with embassies. It's a shrinking globe, and more and more people are having to be involved internationally and to live internationally. And this bill contains two features that are of significant importance to the Department of Defense. As you know, there is a bill, a federal bill called the Uniformed and Civilian Overseas Absentee Voting Act, and it's an attempt to provide additional opportunities for people who are overseas to cast ballots. The Department of Defense has been involved for four years in trying to develop an Internet system called "Serve" which we all thought was going to be up and functioning this last year, but because of all of the attacks by computer academicians on source code and computer security, at the last minute the Department of Defense pulled back from that program which would have allowed hundreds of thousands of military to vote via the Internet. And as a result, those who were overseas had to fall back on whatever other system was available. Well, in Nebraska, fortunately we did have a system whereby we could fax ballots to overseas military and civilian voters, and it did get used to some degree. But what we found is, technology is changing, and the military is changing so much faster than our legislation, that circumstances such as having this "Serve" program withdrawn at the last minute by the Department of Defense, there were only a few states that had the flexible laws that allowed their Secretary of State to step in and provide for alternative means for the military to vote. Missouri was one of those states that had the kind of flexibility that we're asking for. So in terms of providing for emergency circumstances or unusual circumstances that develop, in order to keep up with technology, we believe that the flexibility of allowing the Secretary of State's office to determine what is a viable and reliable alternative to permit civilian and uniformed overseas personnel to vote is an appropriate response to those circumstances. With regard to children of those who are stationed overseas, I've seen numbers on that, and I can't...I don't have them with me immediately. But it is tens of thousands of people who live overseas and do not have the right to vote because they have lived overseas with their parents as missionaries or as civilian contractors or with the military and have never lived in the United States.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 408  
and Veterans Affairs  
February 9, 2005  
Page 14

They're American citizens; they're, by federal law, entitled to vote, but they don't have a state residency except through their parent. And this would allow them then to claim their parent residency in a state in order to cast a vote in that state. Practically, what happens now? If such a person 18, 28, 38, living overseas, has not ever lived in a state, is not in a state currently, does not claim any other state as a resident, contacted a county clerk by phone and said, how do I vote? More than likely, they would probably be told, well, if you consider Nebraska to be your residence, even though you're not in Nebraska but it's where your parents have a residence, and if you have a relative or a friend with a home in this county, just mark that residency. If you don't, what the county clerk would probably do is make the county clerk's office the residency of that individual. But it would be a much more honest, straightforward way to address this issue by allowing them to claim the residency of their parent as long as they're overseas. And once they move back, obviously that changes. But these are priority measures. The Department of Defense supports in support of extending the right to vote to more American citizens overseas, particularly our military. Thank you, Madam Chairman.

SENATOR SCHIMEK: Thank you, Mr. Secretary. Are there questions? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: I might have missed it, what would prevent them from doing this in several states?

JOHN GALE: Well, it's, of course, a felony if they were to do so. I guess that's true of all of us. It's what prevents a lot of crimes from being committed; the price is a pretty severe price to pay.

SENATOR WEHRBEIN: But you're without...you have a physical presence here; if you're here, people know that you're here. But when you just say a telephone call, they could make several...even in the same in state, I guess, and they really...well, you'd probably catch it with registration in the state, wouldn't you?

JOHN GALE: Well, if they attempt to do it in the same state, it would get caught, particularly now that we're

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 408  
and Veterans Affairs  
February 9, 2005  
Page 15

going to have our statewide interactive registration system. But you're right, this type of problem is a problem between states. There are students from one state who go to college in another state. I remember it came up in the University of Wisconsin a couple years ago, when they thought that there were a number of students who were being encouraged to register as local voters in the community of their college and then also to vote absentee in their home town. And you'd hope their conscience and good sense and sense of honesty of a student would prevent them from doing that. On the other hand, I also read that there were some 46,000 people from the state of New York, or snow birds, who are registered in both Florida and New York, and have the opportunity to vote twice if they so desire. So you're probably not going to ever prevent all fraud from existing until there's a national interactive registration system, and that's going to be some time coming. But I guess it would be up to us, to continue to do our best to ensure that we have a fair, reliable, and honest election system in Nebraska, which we certainly would do.

SENATOR WEHRBEIN: Thanks.

SENATOR SCHIMEK: Senator Langemeier.

SENATOR LANGEMEIER: Thank you.

JOHN GALE: Senator Langemeier.

SENATOR LANGEMEIER: Secretary, I guess I want to follow up on Senator Wehrbein's question there. Would this not be a tool to help enhance fraud, the ability to commit the fraud, especially for the siblings of the people that live overseas. I see great opportunity; they could register in any state in the country, if not more.

JOHN GALE: I guess fraud is always a possibility in every endeavor in our society, and I'm constantly stunned by how many places fraud is committed and stunned at the dishonesty of the people who are involved in it. But it still, still, despite Enron, despite WorldCom, despite Arthur Andersen, it's a small percentage of the total American population that is involved in that endeavor. If it ever becomes greater than that, I fear for the safety and welfare of our

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 408  
and Veterans Affairs  
February 9, 2005  
Page 16

democracy. But we don't have rampant, widespread fraud in the United States. We've had problems with elections, certainly, in 2000, but it wasn't due to fraud. It was due to mismanagement; it was due to inadequate equipment; and it was due to confusing ballots in some of the states. And those issues are being addressed. But in terms of encouraging, let's say there are a hundred thousand young people abroad who have always lived abroad with their parents, and they're all over 18 and they've never had a right to vote. Do you consider them to have the same right to vote as any other citizen? I believe we would all say, yes. They're American citizens, they're not second class because they live overseas. We have to accommodate them in some way. And so how do we establish a residency for them? It's a hard question. I don't think we'd leave them permanently second class simply because their parents have elected to serve in the military or serve in a business capacity overseas. We have to address it some way. I think it's a greater risk to democracy to deprive those people of the right to vote than it is to try to address the problem and maybe have a small percentage of fraud. And for what purpose would they want to try to accomplish fraud? Now, if all hundred thousand of them could coordinate with one another and say, we're all going to cast our vote in Florida next year, and try to influence that election, and we're all of the same political party and we all have the same preference for a candidate, maybe they could have an impact. But those young people come from every one of our different 50 states; they come from different political parties and different backgrounds and values. Are they all going to try to commit fraud in order to cast their one ballot? What's in it for them, except a possible felony conviction? I don't think we're going to face that problem, Senator, and I think it's more important for us to respect their right as a citizen to vote and to at least give them the benefit of a doubt of honesty, rather than presuming them to be eager to commit fraud on our democracy. So this is one way to address it. It's not going to eliminate all fraud, I agree, but the greatest percentage of them are going to be honest Americans casting a vote.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Senator Mines, did you have a question?



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 408  
and Veterans Affairs  
February 9, 2005  
Page 17

SENATOR MINES: I did not. Thank you, Madam.

SENATOR SCHIMEK: All right. Thank you. Anybody else? May I ask one follow-up question, too?

JOHN GALE: Certainly.

SENATOR SCHIMEK: Am I to gather from what you've been talking about, that the federal government is not going to follow up with their program and try to get it working in time for the next election? The Department of Defense, I should say.

JOHN GALE: My understanding is that they are going to attempt to resurrect that program and probably build in considerably more safeguards and firewalls than they were providing for last time around. I think they must have realized that maybe some of the computer studies had some legitimate questions and concerns, and that's why I think they withdrew the program, is they want to go back and readdress that. All of us are concerned about Internet voting. None of us are ready to leap into Internet voting in our respective states. We don't think we're ready for that yet. There are way too many questions. But if anybody has the money to put together a prototype that might work, it's the Department of Defense, with their \$500 billion, so we're hoping that they'll accomplish that by the next presidential election. And this would give us the flexibility to work with them to ensure that there is a system that works. We're not sure, even though we adopted, the Legislature adopted and we supported the fax ballots, we think that technology is almost too outdated today to keep up with the mobility of our forces. I've read some books on the Iraqi invasion and it's just amazing how mobile those forces were. They didn't settle down to establish bases for quite some time, but they all had access to the Internet. So I think the Department of Defense is going to lead the way and develop a prototype that will be workable and probably supported by the election community.

SENATOR SCHIMEK: Thank you. Appreciate your being here. Good to see you.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 408, 233  
and Veterans Affairs  
February 9, 2005  
Page 18

JOHN GALE: Thank you. It's good to see you.

SENATOR SCHIMEK: Thank you.

JOHN GALE: Thank you.

SENATOR SCHIMEK: Are there other proponents of the bill? Any other proponents? Are there any who wish to testify in opposition to the bill? Any opponents? Any in a neutral capacity? Then, Senator Flood has waived his right to closing, so we will conclude the hearing on LB 408 and move to LB 233, Senator Pahls. Before you start, Senator Pahls, Sherry just reminded me that we did get a letter from General Lempke, with the National Guard, offering support of LB 408, and I forgot to read that in when I should have, so we'll do it now. (Exhibit 1) So go ahead whenever you feel like starting.

LB 233

SENATOR PAHLS: (Exhibit 1) Thank you, Senator Schimek and committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31, the Millard of Omaha. I introduced LB 233 on behalf of the Secretary of State. You do have a printed copy of some of my dialogue. LB 233 allows an election commissioner or a county clerk to divide a voting precinct into two or more parts between the statewide primary and general election if the commissioner or clerk has been authorized to do so by the Secretary of State. These changes would be made only when it becomes obvious that the precincts have grown faster than anticipated. This kind of growth has occurred in subdivisions in Douglas, Sarpy, and Lancaster Counties. These changes would require both parties of the local election commissioner or county clerk and the Secretary of State, this is a built-in check and balance and it avoids unwarranted changes. So I meant to say all three or two parties would have to be involved in this decision. The precincts made as a result of this division must comply with all other provisions of the state laws. The new precincts are to be created only when it is necessary to avoid undue hardships on the registered voters in the precincts to exercise the right to vote. An example of this is long lines at polling places have been becoming a

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 233  
and Veterans Affairs  
February 9, 2005  
Page 19

problem in some areas of the state where the population is growing rapidly. This bill does not allow changing all the boundaries of several precincts, but limits the commissioner or clerk to dividing currently existing precincts with two or more precincts as needed within the same time frame specified and with the authority of the Secretary of State. The bordering precincts would not be affected. And one of the key things in here, and I want to tell you a little story, I know how hard it is to get things changed is, about 12 years ago when I opened a new building, I had the opportunity to set the polling place within that building. The following election I wanted to move the polling place. I could not do that without the election commissioner and the Secretary of State giving that approval. So these changes would, there are an awful lot of checks and balances in this.

SENATOR SCHIMEK: Okay, thank you, Senator Pahls. Are there questions? I just have one, and I think I...I don't think this could happen, but I'm assuming that if you divided a precinct, and let's say it was on the edge of a legislative district, you would simply be dividing a precinct; you would not be putting one of them...one of those precincts into another legislative district...

SENATOR PAHLS: No.

SENATOR SCHIMEK: ...or another, any other kind of a district...

SENATOR PAHLS: Within that precinct.

SENATOR SCHIMEK: ...within that precinct?

SENATOR PAHLS: And that's the growth that would occur basically from the primary to the general. Does that make sense?

SENATOR SCHIMEK: And so, generally speaking, if a candidate had run for a particular office in the primary election, and had certain precincts in their district, they would continue to have the same precincts in the general election, no matter whether it's an NRD race or whatever.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 233  
and Veterans Affairs  
February 9, 2005  
Page 20

SENATOR PAHLS: Right. It would not...it would change within that precinct.

SENATOR SCHIMEK: Within that precinct. Okay, I just wanted to make sure. Thank you. Yes, Senator Burling has a follow-up question I think.

SENATOR BURLING: Senator Pahls, would each division then result in the need for another election board?

SENATOR PAHLS: I'm going to have to let the people following me answer that question.

SENATOR BURLING: Okay.

SENATOR SCHIMEK: Thank you very much, Senator Pahls. Are there proponents of the bill?

JOHN GALE: Madam Chairman, members of the committee, Senator Pahls. I'm here to testify in behalf of and in support of LB 233; John Gale, Secretary of State for the state of Nebraska. As a proponent of this bill, I would say I think it is a very, very needed change. We saw this in 2000; we saw it in 2002; we saw it in 2004. The problem of overcrowded precincts in rapidly growing areas is simply a chronic problem we're going to continue to face in the counties, particularly that Senator Pahls mentioned. And county clerks don't have this tool in order to make adjustments. When you watch how fast some of these developing counties can grow, and Senator Wehrbein and Senator Mines have certainly seen them in their counties, major subdivisions can go up over the course of a summer, and incredibly impact the number of voters in that precinct for which the election official can't respond because the law doesn't allow them to divide a precinct between a primary and a general election. This will give them authority to make application for that permission to divide a precinct, not to change the area in which anyone is running for election, but to simply divide it into the necessary number of precincts so that it's a manageable number and so that it can be fully staffed, as any precinct, so they're dealing with less than 1,000 voters, rather than 1,800 or 2,000 or what may happen in a rapidly developing subdivision. Over what period of time can this be done?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 233  
and Veterans Affairs  
February 9, 2005  
Page 21

Well, by the end of August the county officials have to give notice of election, and it would certainly be unwise, probably, to attempt to make any further change after that point. But during the course of that spring and summer months, you would have a pretty good idea of where those new developments are going and how many people might be there joining that precinct as voters. We are very supportive of this bill. We think it's an additional tool that's needed in order to help prevent these long lines, which I think truly have been a source of great frustration for many voters who want to vote and show up and can't vote, and maybe it takes two or three hours for them to accomplish the fact, if they're willing to wait. I'm sure there are a number of people who gave up in frustration because their fast-paced life didn't permit them to wait around for two or three hours. So will this tool be the panacea, the cure-all of the problem? Probably not. We'll probably still have some long lines; hopefully not so long and hopefully not so many. But it will be of considerable help in addressing the problem. And we'll work, continue to work closer and closer with our county officials to be sure that they get all of the relevant information about what's happening in their county so that they know where those hot spots are and so they address them with adequate polling sites, as well as adequate number of ballots--another problem that has come up. Thank you.

SENATOR SCHIMEK: Thank you, Mr. Secretary. Senator Wehrbein has a question.

SENATOR WEHRBEIN: No, I have to leave.

SENATOR SCHIMEK: Oh, no, he has to go introduce a bill. Any questions? Okay, Senator Burling.

SENATOR BURLING: Well, I'll ask mine, Mr. Gale.

JOHN GALE: Senator.

SENATOR BURLING: You heard my question, I think. Would a division of a precinct necessitate another election board?

JOHN GALE: It would be fully staffed as any precinct would be. It's not intended to be less than a full polling site,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 233  
and Veterans Affairs  
February 9, 2005  
Page 22

and therefore would have all of the necessary election officials required for a precinct.

SENATOR BURLING:     So there would be some fiscal impact; a little bit.

JOHN GALE:     There would probably be some fiscal impact from that, yes. It's just a fact of life that when you're going to have growth, you're going to have some costs involved in order to accommodate that number of voters. If you don't incur the costs, you're going to have the frustration of the long lines and inadequate precincts.

SENATOR BURLING:     Thank you.

SENATOR SCHIMEK:     John, this bill says that the county clerk shall notify each state and local candidate affected by this change.

JOHN GALE:     Correct.

SENATOR SCHIMEK:     But it doesn't say anything about the voter. And I'm thinking if I had gone to the poll in, say, May, and it was down at my little local clubhouse where we always vote, and sometime between May and November the precinct got changed, I mean, I think I'm alert enough a voter that I would probably catch it, but there would be others in my precinct who might not. Is the only way then they're going to learn about this change of polling place is through the newspaper or whatever, or will there be some attempt to notify them? Because I can see people showing up and being mad then.

JOHN GALE:     And, of course, it happens.

SENATOR SCHIMEK:     It happens anyway.

JOHN GALE:     It happens today when precincts get changed and the polling sites have to be moved. People still presume that to be their polling site, and, of course, the information will be available at that old site when they show up and they'll get redirected. That's still better than waiting in the long line. Secondly, they're just multiple overlapping sources of information--our Web site,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 233  
and Veterans Affairs  
February 9, 2005  
Page 23

the county Web site, the local newspaper, the political parties, the candidates themselves, all trying to get voters to determine their place to vote and helping them in that process. Most newspapers print precinct maps and help you identify. I guess, if a voter just ignores all that information and just assumes, they are going to have a chance, it's not a 100 percent chance of failure, because if it's been split in two they have a 50 percent chance of still being right. But you're right, it will have some confusion, and maybe there'll be a few voters upset, but not near as many who are upset when you have a line that stretches a hundred yards out behind the polling site.

SENATOR SCHIMEK: Okay. Thank you.

JOHN GALE: Thank you.

SENATOR SCHIMEK: Appreciate your being with us. Are there proponents, other proponents of the bill? Welcome.

CARLOS CASTILLO: Good afternoon.

SENATOR SCHIMEK: Good afternoon.

CARLOS CASTILLO: Carlos Castillo, C-a-r-l-o-s C-a-s-t-i-l-l-o. I'm the Douglas County Election Commissioner, and I thought I would just give you a view from the field to tell you how it impacts what we do in our office. And I'll keep it brief because my sentiments echo Secretary Gales. Any time you can give election officials more flexibility in dealing with an election, it's going to benefit the voter. I think Douglas County is a great example, and Millard, in particular. We have such growth in the western part of the county that it was not uncommon and actually we saw this right before the presidential general election, that some of our precincts in the last month alone, before the election, grew by 20 percent. That's an enormous growth in voters, being able to deal with that in August or July in making appropriate adjustments. I mean, when you start to get numbers that are that high, you start to have facility issues, parking issues, and long lines. And so this is just another tool, I think, to give election officials, election administrators, the ability to deal with the problem. The nice thing is, Senator Burling asked about

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 233  
and Veterans Affairs  
February 9, 2005  
Page 24

financial impact, again that gives...the local election official has the option of using the same board of people but maybe just using... You would have to ultimately recruit the same...additional people might be some more money on that end, but the costs on the back end is going to save you a lot more, because if you make a polling place unhappy, unless they're a school, they don't have to do it. And polling places are very, very hard to come by these days, and so we like to keep them happy. And when they have to deal with a thousand people waiting two hours or an hour and a half to vote, that makes it very, very difficult. So I'd be in favor of this bill.

SENATOR SCHIMEK: Thank you very much for your testimony, and thank you for coming down. Are there any questions? Seeing none, I have just one question. Douglas County probably is the example that is most needful of this kind of a provision. Let's say that you had 10 precincts that got divided in an election between the primary and general. Would you, on your own initiative, choose to notify those voters that they were going to have a new polling place?

CARLOS CASTILLO: It's a standard operating procedure in our county that we notify voters. I mean, it would be...you'd pay the price on the back end if you didn't do that. I mean, our phone would ring off the hook if we didn't do that. It just creates a lot less hassle on election day if you inform. We even go as far as to inform political parties, because a lot of things that they do revolve around precincts, and candidates, obviously, we notify, and voters too.

SENATOR SCHIMEK: Sure. I would hope that all the election commissioners and county clerks would choose to do the same.

CARLOS CASTILLO: It's a good practice.

SENATOR SCHIMEK: Yeah, it is. Okay, thank you very much for being with us. We appreciate it.

CARLOS CASTILLO: Thank you.

SENATOR SCHIMEK: Are there other proponents for the bill?  
Good afternoon.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 233  
and Veterans Affairs  
February 9, 2005  
Page 25

DAVID SHIVELY: Good afternoon, Senator Schimek and members of the committee. My name is Dave Shively, S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner, and I, too, am here today in support of this bill. We do have situations in the city of Lincoln where we've had some fast-growing areas of our city that this would help us to be able to alleviate some long lines on a busy election day. We are constantly looking at our precincts, and as they grow, to make sure we try to meet the needs of the voters here. But we have that thing right now where we can't split a precinct between a primary, statewide primary and general election. And when we do see growth that will maybe happen in a primary election, and we know we're going to see continued growth because of building is going on in that area, it gives us an opportunity to make that change between the statewide primary and statewide general election. So I too am supportive of this legislation.

SENATOR SCHIMEK: Thank you, Dave. Any questions?    Seeing none, we will take the next proponent.

SHERRY SCHWEITZER: (Exhibit 2) Good afternoon. My name is Sherry Schweitzer; that is S-c-h-w-e-i-t-z-e-r. I am the cochairman of the County Clerks, Register of Deeds, and Election Commissioners Association. I'm here to just more or less say that we do support this LB. Our main job is to facilitate the election process, and if this is one more step at helping the voter through a good inset of that, we think that would be a good step toward being someone...a step towards a better process for someone who fails to vote because of a slight problem like this. I also have a letter from the Nebraska Association of County Officials that I'd like to distribute. Any questions?

SENATOR SCHIMEK: Thank you. We appreciate your testimony. Senator Burling, did you have a question?

SENATOR BURLING: Yes, Sherry. What do you consider the best number of voters per...? You've got a precinct of a couple thousand people. That should be divided once or twice or...?

SHERRY SCHWEITZER: That would be a very large precinct to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 233, 290  
and Veterans Affairs  
February 9, 2005  
Page 26

have that many in there. In Seward County I do have some precincts that have up to a thousand people. It depends. I would say that you would not want any more than that. The law does tell you what size of precincts you should have. But, you know, I guess experience would tell you whether there are lines. There are some precincts that have a lot better turnout, so I guess the practice would be, if you have experienced that before, then you'd better think about being able to take upon this law if it would pass, and divide it up and see what would happen.

SENATOR BJRLING: Okay.

SENATOR SCHIMEK: Thank you very much for being with us; we appreciate it. Are there others who wish to testify in favor of the bill? Any others? Seeing none, are there any opponents of the bill? Any in opposition? Seeing none, any who wish to testify in a neutral capacity? Seeing none, Senator Pahls to close. You're waiving closing. All right. Thank you very much. That concludes the hearing on LB 233. And Senator Mines is here to open on LB 290. We don't have to worry about calling senators to come to our committee today, do we?

LB 290

SENATOR MINES: Not today, we don't, Madam Chair. Good afternoon. Senator Schimek, members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District, and I'm the principal introducer of LB 290. Last December set the tone for my agreeing to introduce this bill on behalf of the Secretary of State. I was in Orange County Airport...excuse me, last November; it was about a week before the general election. And passing through, there were I noticed, you could call them kiosks, they were really 8-by-10 foot tables set up in the airport, and people were voting. And I found it...I looked at it and thought it was interesting, and wondered how they kept everything straight; frankly didn't know; and let it go at that. And then before session began, Secretary Gale approached me and asked if I would be interested in introducing this bill. Primarily, what this proposal does is it allows the Secretary of State to set up a pilot

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military                    LB 290  
and Veterans Affairs  
February 9, 2005  
Page 27

project that would term...for what is termed, "satellite voting"--voting at a location prior to election day other than at the clerk or the commissioner's office. Other states that are doing this--Tennessee, Colorado, Nevada, California. And with the anticipated central voter registration system, local officials could set up voting centers. And I strongly urge local officials could set up voting centers where workers could access any ballot the voter was entitled to. And Secretary Gale will explain that in more depth. I hope that by providing an alternative location and time, these potential voters that may have difficulty making it to the polling place on election day could be enticed into participating in the election process. A proposal along these lines was endorsed by the Vote Nebraska Initiative. And as I suggested, Secretary Gale is behind me and I would ask that questions be directed to him.

SENATOR SCHIMEK: Thank you, Senator Mines. Are there questions? I have a quick one, and you may not know the answer to this, but those kiosks in Orange County, how did people access a ballot? Did they have to have an ID number?

SENATOR MINES: No. I didn't see an ID produced. They had a computer that was on-line that would print out the specific ballot for that individual, and I can't tell you if an ID was shown or not. Now that I think about it, I would assume it was, but I didn't see that happen. But they were individual-specific ballots printed for that person at the time they were at the kiosk. Amazing.

SENATOR SCHIMEK: Wow, that's pretty neat. Thank you.

SENATOR MINES: Thank you.

SENATOR SCHIMEK: Are there proponents of the bill?

JOHN GALE: Madam Chairman, members of the committee, I'm John Gale, Secretary of State to the state of Nebraska, here to support LB 290 as introduced by Senator Mines. This is a part of, I guess, my bigger vision of what I see happening across the United States in terms of voting. For a long time, it pretty much was a system in every county, every one of our 3,000 counties. It was exactly the same kind of a

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 28

voting system until absentee voting came along, and then even that was not available for many people because you had to show cause, in order to be an absentee voter. And that was only something like 1 to 3 percent of the people who were using absentee voting for cause. But since about 1998, when that opened up, and more and more states have adopted absentee voting without cause, there are probably some 30 states that have that system today. There are also, more and more states that are allowing mail-in balloting and giving local counties the option to elect to have all mail-in balloting. The state of Oregon is totally, all mail-in balloting. I was surprised this last week, weekend, back in District of Columbia, talking to other Secretaries of State about the November election, and how many of them had as much as 50 or 60 or 70 percent of all votes cast by some alternative method than going to their traditional poll site. Voters are looking for a menu; they're looking for alternatives that they can choose according to their lifestyle and the demands on their time and their work schedule that will work into their life to allow them to either vote early by absentee ballot or going to the county official's office and casting their ballot early there. Well, satellite voting is another one of those opportunities that hasn't been available in Nebraska because we needed to have our statewide interactive registration system so that that registration system can be downloaded onto a computer and taken to a site where it can be instantly determined whether or not an individual who steps up to vote in a hospital or a school or an airport can be confirmed as a registered voter, and then also so that we can use a printer with the same kind of information available so that a ballot on demand can be printed. So it takes some fairly sophisticated technology in order to accomplish this. So you have to have that access to the voter registration system and you also have to have a printer that can do a ballot on demand with the computer memory of every ballot face in that county. But we are at that stage now. By January 2006, we have a fully active statewide interactive voter registration system that is intended to be as real time as it can be accomplished, and to have included with our purchase of HAVA money, some of the ballot-on-demand printers. Obviously, we're all concerned about fairness. We all want to be sure that the satellite centers aren't concentrated in an area that might be

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 29

considered to be maybe favorable to one political party or the other. Obviously, it's got to have the assurance of fairness and impartiality, and that's why the bill, as introduced by Senator Mines, does define on page 3 the procedures and how they'll be designed by the Secretary of State's Office pursuant to rules and regulations, and the goals of those procedures, which is and includes ensuring that the election is conducted in a fair manner. So, obviously, there have to be some standards, and that's why rules and regulations are required, because rules and regulations can only be adopted by public hearing and by public input and by public notice, so that everybody has an opportunity to look at those proposed rules, respond to them, and help us craft rules that are fair to everybody. If it was simply in my sole discretion, I wouldn't consider that to be fair, a fair system, because I could be accused of subjective choice on where those locations might be. But the county makes application to the Secretary of State's Office. We have rules and regulations setting forth the standards for the use of those systems. But if it's an alternative opportunity for more voters to vote in their busy lives, that's what they're definitely reacting to positively across the country. Whether it's early voting, mail-in voting, satellite voting, these systems are what the busy American voter would like to have. And a percentage will continue to vote, certainly in Nebraska, in their precinct, and where they reside. But, particularly in the busier counties, the bigger counties, this is an alternative that's very useful in increasing voter turnout.

SENATOR SCHIMEK: Thank you, Mr. Secretary.

JOHN GALE: Thank you.

SENATOR SCHIMEK: Senator Brown has a question.

JOHN GALE: Senator.

SENATOR SCHIMEK: And I haven't introduced Senator Pam Brown of Omaha yet, so I'll do that for the record.

SENATOR BROWN: Who's been in and out.

SENATOR SCHIMEK: In and out.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 290  
and Veterans Affairs  
February 9, 2005  
Page 30

SENATOR BROWN: Are you concerned at all about counties who may not have the technology in place to be able to do this and how we're going to deal with that situation?

JOHN GALE: That's a good question and we don't have the technology today, but we are purchasing the technology with the Help America Vote Act federal funds that have been received by the state. And there will be equipment in every county that will be capable of having a computer memory of all of the ballot faces that are possible in that county. So in Douglas County there are 3,000 ballot faces. Until you get to a digital memory, a computer memory, there's no way you can go to a location. You're not going to be able to carry 3,000 different ballots with you, so you have to have that computerized memory, but that will be available to us in 2006, both the memory of every registered voter in the county, as well as the memory of every ballot face in the county. So the combination will be available in every county because the statewide interactive registration system will be capable of being downloaded into a laptop in each county, and they'll also each have the equipment, whatever you want to call it, touchscreen, we'll call it touchscreen equipment, that's available of being run by battery and transported from location to location. So we're not there today, but we'll be there very shortly.

SENATOR SCHIMEK: Senator Fischer.

SENATOR FISCHER: Nice to see you, today, Mr. Secretary.

JOHN GALE: Thank you.

SENATOR FISCHER: I have just a couple things. The bill would allow for these satellite voting places to be set up 20 days before an election.

JOHN GALE: Correct.

SENATOR FISCHER: If you look at a county the size of Lancaster County, how many of these satellite places do you think the election commissioner here would want to put up in malls or wherever?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 31

JOHN GALE: Well, my guess is, not an excessive number, for sure. Probably for Lancaster County or Douglas County, we might be talking about a half a dozen. And they could be rotated from weekend to weekend. It's set up so there are three weekends available, which is really quite a bit of opportunity for people if they're going to a mall or hospital or some other central location where people gather. That's probably as much as a busy election official is going to want to deal with. And there's a cost involved, between the laptops and the people who would have to man that equipment. So they're not going to invest a dramatic amount in the method, but enough so that each weekend there are maybe a half a dozen sites available.

SENATOR FISCHER: So you just anticipate these sites being up on weekends, not for the full 20 days before an election?

JOHN GALE: Well, I guess that would be up to the election official. Certainly it could be available for the full 20 days; that probably is what the maximum would be. Whether an election official would want to run it right up to the weekend before the election, I guess there would have to be some discretion there as to what their goal is. But considering that what they're trying to do is reach locations where people are gathering, maybe it's a state fair that's going to be in existence for a week or 10 days, you might cover it for that week or 10 days and then go to another location with that equipment. So I doubt that there'll be any one site that would have that equipment for a full 20 days.

SENATOR FISCHER: Okay. And you alluded to this in your previous answer, but I notice on the fiscal note there's no fiscal impact for the state. There will be a cost to the local political subdivisions to the little counties on this in order to do it, and do you see that as a burden?

JOHN GALE: Well, if the state wasn't able to provide the funding for the equipment with the federal money under the Help America Vote Act, it would indeed be a burden because the equipment is expensive. But we've assured every county that with the funds that we're receiving we'll be able to provide them with the equipment, with the touchscreen equipment and with laptop computers, in order to do that.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 32

SENATOR FISCHER: But the counties still have to provide for the workers, correct?

JOHN GALE: But they will still have to pay for workers, that's correct; that's correct.

SENATOR FISCHER: Okay. Thank you.

JOHN GALE: So there is some fiscal impact there.

SENATOR FISCHER: Okay. Thank you.

SENATOR SCHIMEK: Seeing no further questions, thank you very much for being with us.

JOHN GALE: Thank you, Senator. Thank you.

SENATOR SCHIMEK: We appreciate it. Are there others who wish to testify in favor of the bill?

DAVID SHIVELY: Good afternoon again, Senator Schimek and members of the committee. My name is David Shively, S-h-i-v-e-l-y. I am the Lancaster County Election Commissioner, and I am here today in support of this legislation. When I first became election commissioner in August of '99, we had a special election, about October, and we used the touchscreen machines for early voting in our office, or absentee voting in our office. And one of the things that came to my mind at the time, is that it would be nice if we could take this out on the road, whether we do it in the evenings or weekends or other locations, to be able to meet the needs of people. And I think this gives us another option. Certainly there's some challenges with costs of supplying workers and equipment and that type of thing, but certainly it gives us some option to check into that and be able to do it when we currently cannot do that because state law wouldn't permit us to do that. Absentee voting or early voting is growing. We had nearly 3,300 people come in to the Lancaster County Election Office in the presidential election to cast an early ballot in the 35 days prior to the election. You know, maybe providing a satellite location might alleviate some of the heavy workload in our office in taking it to other locations



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 33

outside of our office, and then we might be able to meet some other needs and keep our staff working on other issues that we have to do, and might alleviate some of our overtime that we had to do. I think it is an option that I'd like to pursue here in Lancaster County. If we can meet those needs and meet the costs that is something I'd like to pursue and I'd certainly like to see this piece of legislation pass.

SENATOR SCHIMEK: Thank you, Mr. Shively. Are there any questions? Seeing none, thank you very much for being with us again today. Are there other proponents of the bill?

SHERRY SCHWEITZER: Good afternoon. Again, my name is Sherry Schweitzer, cochairman of the Election Commissioners Association. We'd just like to go on record supporting this bill. We realize there are other states other than have been mentioned that do permit satellite voting. I was once in Colorado where I went to the grocery store and there was a line, people voting there. And if that can help facilitate problems such as long lines, things like that, we would like to promote that for Nebraska also.

SENATOR SCHIMEK: Thank you, Sherry. Any questions? Seeing none, thank you very much. Are there any other proponents? Any who wish to testify in opposition to the bill? Any opponents?

CARLOS CASTILLO: Good afternoon, again. Carlos Castillo, Douglas County Election Commissioner, C-a-s-t-i-l-l-o. Thank you for giving me the opportunity today to speak against LB 290 which deals with satellite voting the 20 days preceding an election. As many of you know, these are very tough financial times for counties in Nebraska, and in my opinion LB 290 has the potential to become a very large, unfunded mandate for county clerks and election commissioners throughout the state. Satellite voting would be a very expensive endeavor for a county not already equipped with the appropriate technology. For instance, Douglas County would have to invest thousands of dollars in technology to accomplish satellite voting, and that investment could double or triple depending on the way the Secretary of State would implement this program. In addition to hardware costs, there would be significant personnel costs associated with implementation. There is no

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 34

doubt that additional staff members would have to be hired to coordinate and operate this program. Again, the personnel costs could double or even triple, depending on the way the Secretary of State would implement this program. In addition, there are transportation cost issues. Obviously, the unfunded financial impact of LB 290 could have on counties is extremely troubling to the Douglas County Election Commission, but we also have serious logistical concerns. How many of the 20 days prior to an election would be used for satellite voting? All 20? Will the satellite voting locations change daily? Could there be more than one location on one day, operating simultaneously? How do we transport and how do we pay to transport equipment from point A to point B? In addition to the many outstanding questions we have, there are also other logistical issues to deal with. In a county of our size, there are very technical questions that would need to be dealt with. In order to have a successful satellite voting program, the appropriate technology would need to be utilized. In last year's presidential general election, Douglas County had over 400 different ballot types used, and that number can get 7, 8, or 9 times larger for a primary election. As you can see, the sheer number of ballots available to voters makes satellite voting very challenging. And in our opinion, there are probably only two options that have the capabilities of meeting satellite voting needs: touchscreen technology, like that used in Lancaster County, which we currently do not have, which is very expensive and is also very expensive to maintain; or ballot-on-demand printing. Printing ballots on-demand, at a satellite location could be very challenging. Ballot-on-demand printers are slow, large, expensive, and manufacturer-specific. It is a good practice to have a backup printer for every printer being utilized, which automatically doubles the cost. It is also important to note that the 20 days preceding an election, which is proposed in this legislation, are the most difficult for our operation. This is when we typically run a 16-hour-a-day operation in our office. The work load for our staff is high; voter interest is peaking; and most of the time we are understaffed. In our view, aside from the money, the item which makes this piece of legislation the most difficult to implement is that the local county clerk or election commissioner is subject to the Secretary of State's

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 290  
and Veterans Affairs  
February 9, 2005  
Page 35

implementation plan, and we are left holding the bill. LB 290, in it's present form, takes away the county clerk's or election commissioner's independence and flexibility in determining what is the best fit for their respective county, which is an important part of a successful election. Before I end I'd just like to say that we are for satellite voting, the concept of satellite voting, but we think you have to give counties the flexibility to opt in or opt out or be in charge of that program in their county. It makes sense that the local county establish the places, or at least make recommendations on the places, that fit best within the county. For instance, the Douglas County Election Commissioner would know that 114th and Dodge is a huge construction project, and having satellite voting at a grocery store at 114th and Dodge just doesn't work. Well, you get that flavor from local election officials to the county officials on the ground. And so with that those are our major concerns, but I would like to reiterate that we are not opposed to the concept of satellite voting, just it's a very expensive endeavor and it was a little bit unclear to us exactly who would initiate this. Would a county initiate this process and submit a plan to the Secretary of State, or could the Secretary of State come and say, this is where you're going to be these days and you need to staff them and have the equipment to do that. Those are our concerns. I'd be happy to answer any questions you might have.

SENATOR SCHIMEK: Thank you. Mr. Castillo, I think that the way I'm reading this is that it is certainly not a mandate. It is simply giving the Secretary of State permission to promulgate rules and regulations that would govern satellite voting if a county so chose to do so, I believe. It's giving permission for it to happen. But the way I'm reading it I don't think it mandates anything for the counties.

CARLOS CASTILLO: That was a little bit unclear to us. I'm not sure what in the rules or regulations could stop the Secretary of State from determining those locations without that process being initiated by us.

SENATOR SCHIMEK: In the first place, he wouldn't want to. I mean, that's always handled at the local levels. So, I mean, hopefully, Senator Mines will maybe say something

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 290  
and Veterans Affairs  
February 9, 2005  
Page 36

about this in his response at the end, but I don't think that secretaries of state ever get involved in deciding where polling places are going to be; that's strictly a local matter. And that, I know, was the intent of the Vote Nebraska Initiative that suggested that the Secretary of State might want to pursue this. So that we have some standards and provisions in place in case a county wants to do it. I don't think it will happen wholesale real fast; I don't think it will happen until the equipment is available to do that so the counties don't have to underwrite that themselves, but that's my take on it.

CARLOS CASTILLO: And if that is correct, then, I mean, we can support that. It was just a little bit unclear and we would sure rather be safe than sorry.

SENATOR SCHIMEK: Right. I understand.

CARLOS CASTILLO: You know, this budget year alone our budget was cut by \$100,000. And, you know, we start adding these costs, and a ballot-on-demand printer is a \$4,000 printer, and it's not something that you set on your desk; it's a very big piece of machinery. And we learned the hard way, you have to have two of those every time that you're printing ballots; you just have to. If one breaks down, you can't stop voting, and the same thing would be for satellite voting. So the costs, we want to be extremely safe and we want to make sure that at the end of the day we don't have to end up footing the bill.

SENATOR SCHIMEK: Yeah. And I understand that, and I think probably everybody at this table understands that, so. Seeing no further questions, thank you very much for being with us. We appreciate it.

CARLOS CASTILLO: Thank you.

SENATOR SCHIMEK: Are there other opponents of the bill? Any who wish to testify in a neutral capacity? Senator Mines to close.

SENATOR MINES: Thank you, Senator Schimek, members of the committee. Mr. Castillo brings up some very good points, and in looking at the legislation it doesn't clearly define

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 290  
and Veterans Affairs  
February 9, 2005  
Page 37

that local...first of all, local controls should be paramount in this. Local election commissioners, county clerks should be able to determine, if they participate, where sites are. And I know the intent of the Secretary of State was not to create a situation where they determine whose vote or what sites will be voted in and how that works. I also heard, you know, the expense of the technology, and that certainly is a concern. And I also heard Secretary of State Gale indicate that funding will come from the Help America Vote Act. And I can't tell you what dollars are coming this way, and I don't know all the particulars. What I do know and the reason that I carried this in the first place is that this is a pilot project. This is not a long-term initiative, and if there is an indication that it might go further, I think this legislation needs to be revised. This is to enable the Secretary of State to, as you mentioned, promulgate rules, and then allow the Secretary to institute a program on a pilot basis, local basis. I would presume it would be here in Lincoln, as opposed to Omaha. It's more convenient and it might be a little bit easier to manage, as opposed to, you know, widespread application of this legislation. I would encourage the committee to consider this, and I would like the opportunity to meet with our legal counsel to talk about the local control issue, as well as the Secretary, to ensure that election commissioners and county clerks, in fact, retain local control and we don't somehow sidestep that issue. So we can talk before we decide what to do with it.

SENATOR SCHIMEK: Thank you, Senator, and I think that the counsel has indicated to me that she believes that this is permissive only and that it's not mandatory, and certainly there is nothing in the language that says we're taking away local control.

SENATOR MINES: No, there's a lot of "mays" in here.

SENATOR SCHIMEK: Right.

SENATOR MINES: But I understand, at first blush, it could be interpreted.

SENATOR SCHIMEK: But we might want to play with the

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 290, 401  
and Veterans Affairs  
February 9, 2005  
Page 38

language a little.

SENATOR MINES: Yeah. Yeah. Thank you.

SENATOR SCHIMEK: Thank you.

SENATOR MINES: Thanks.

SENATOR SCHIMEK: Seeing no further questions, that concludes the hearing on LB 290. And we will open the hearing on LB 401, Senator Fischer. I have to ask, Senator Fischer, this isn't your first bill is it?

SENATOR FISCHER: No, this is my third or fourth that I...

SENATOR SCHIMEK: Oh, well, you're an old pro now.

SENATOR FISCHER: I should tell you it's my first, and you'll be kind to me though.

LB 401

SENATOR FISCHER: Chairperson Schimek and members of the committee, for the record my name is Deb Fischer, F-i-s-c-h-e-r, and I represent the 43rd District in the Nebraska Unicameral. Today I am introducing LB 401. The purpose of this bill is to provide a voting alternative for large geographic counties with populations of less than 7,000 people in Nebraska. As a result of the Help America Vote Act, each polling site will be required by 2006 to have certain pieces of costly equipment available, such as touchscreen devices. This will prove very expensive to counties with a small budget. It may not be the wisest course to purchase this equipment for the use of the 13 or 38 people that might reside in some of these more sparsely populated precincts. Additionally, it is getting more and more difficult to find polling sites in these smaller populated counties that meet the accessibility features required of all polling places. Under LB 401, the Secretary of State, upon request of the county election commissioner, can designate one or all of the precincts in a county as mail-in-only precincts. Under this scenario, no polling place will be set up in the precinct. Every registered

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 39

voter will receive a ballot by mail 20 days prior to the election. The voter will need to return the ballot to the election commissioner by mail or personal delivery by 8 p.m. the day of the election. All elections by mail will be conducted under the procedures outlined in Sections 32-953 to 32-959. This is not intended as a precursor to an all-mail vote, to an all-mail m-a-i-l voting... (laugh)... but instead it is a viable alternative in specific situations. The limitation on counties with less than 7,000 is an arbitrary figure, but it is expected that the bulk of the precincts where this will be a positive step will be in smaller population counties. As you know, I represent the largest geographic district in this state. In the 43rd District, 11 of my 13 counties would meet that 7,000 population figure. These 11 counties could realize cost savings if this bill is passed and if the local citizens, through their county election commissioner, choose to take advantage of the provisions in this bill. LB 401 will at least give the election commissioners of smaller population counties the option to conduct these elections in an effective and a cost saving method. This bill is, I think, along with Senator Pahls' bill, LB 233, helps to recognize the diversity that we have in this state. In one instance, we're looking at dividing precincts because of increases in population, and my bill, LB 401, is looking at helping precincts look at cost savings for their counties by making available to them this mail-in voting only. Thank you very much. I'd be happy to answer any questions.

SENATOR SCHIMEK: Thank you very much. Are there questions? Anybody? You know, I have one, and I don't mean this to be at all a negative to this idea because I think I can certainly see the practicality of it. But if you... first of all, this applies to 48 counties in the state, which is more than half the counties actually. If certain precincts are able to vote by mail-in ballot, does that give those certain precincts more of a predisposition to a larger voter turnout than the other precincts in a county? You don't even have to answer that; I'm just raising that as a question. It occurred to me that that might be a possibility.

SENATOR FISCHER: I hadn't thought of that; I don't know. What I do know is I'm really excited about this bill. Already in my home county of Cherry County, we had one

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 40

precinct in the last election, there were 13 voters. And those people themselves chose to vote by absentee ballot so they wouldn't have to have their precinct open and the cost of that, plus in Nebraska we all know even in a May election, but especially in a general election in November, you just don't know if you can get to a polling place. Again, especially in my area, where, in fact, these people in this precinct don't even have paved roads to their voting place; some travel over the hills to get there and it takes quite a while for them to get there. But on their own they decided that that's what they would do.

SENATOR SCHIMEK: Well, and I understand that this would work very well in a lot of respects. It would be more economical, probably more people would actually get to vote, but.

SENATOR FISCHER: A problem too, when you're looking at these sparsely populated precincts, let alone counties, but the precincts, the polling place is usually a country school, a rural school district. Depending on what happens in the future there, those precincts might not be available.

SENATOR SCHIMEK: All right. That polling place. Um-hum.

SENATOR FISCHER: That polling place will not be there. And then the cost of the equipment that each precinct is going to be required to have in two years, that's another concern. If you require these counties to go ahead and purchase this equipment, and then, in effect, not have a polling place available, right there is a tremendous amount of waste.

SENATOR SCHIMEK: I understand, and like I say, I think it's a practical solution. I'm just wondering about the equitability of it, and maybe the Secretary of State's Office can comment on that when they come forward. I think they're supporting the bill, but I think it raises an interesting question anyway.

SENATOR FISCHER: I know in the 43rd District and I think all across the state, again here the Secretary of State could address this better than I can, but in the 43rd District...(recorder malfunction, some testimony may have been lost)...absentee voters in the November election,



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 401  
and Veterans Affairs  
February 9, 2005  
Page 41

and I have my own ideas on the reason on that, but perhaps he could address that too.

SENATOR SCHIMEK: And maybe that's part of the answer since we already have absentee balloting anyway, maybe that's what allows it to pass all the tests. Okay, thank you very much.

SENATOR FISCHER: Thank you.

SENATOR SCHIMEK: Seeing no further questions, we will now take proponents of the bill. We're keeping you busy today, aren't we.

JOHN GALE: Pardon?

SENATOR SCHIMEK: We're keeping you busy today.

JOHN GALE: Yes. Glad to be here though. I appreciate being afforded the opportunity to testify on these pieces of legislation which are part of a package that we think is a very important package to keep Nebraska not only current, but progressive in election law changes. John Gale, Secretary of State, the state of Nebraska, here to support Senator Fischer's bill, LB 401. A couple things I would like to mention just hearing them come up in comments by some of the senators. This is not, as Senator Fischer said, a precursor to statewide mail-in voting. That's certainly not our intent or her intent, but it is another one of those items on the menu that we talked about earlier that gives us flexibility and adaptability to the needs of our voters, as well as to changes in circumstances in our counties. The counties that Senator Fischer mentioned, the some 40 or so counties that are considered sparsely populated that fall under the 7,000 population, are also counties where we face two challenges. One, the challenge of always finding adequate polling sites that are ADA compliant, and we have found that to be a very, very large challenge. And the Department of Justice of the United States is not going to accept anything less than ADA compliant. We have had some grants that we've gotten from the Department of Health and Human Services, federal grants, to assist some alterations and changes in facilities to try to make them more ADA compliant, but those are the counties where we face the greatest challenge. Secondly, because of the requirements

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 42

of the Help America Vote Act, that certain kinds of equipment have to be put into every precinct unless they are an all mail-in precinct. We will face some pretty considerable costs to provide some very expensive equipment to some very small numbers of voters. Consequently, the state gains dramatically by a fiscally prudent approach in this instance where it's not cost effective to have this equipment in small precincts, and that benefits the state statewide in using those resources for other purposes such as maintenance and warranty provisions for the equipment. The fact of the matter is that the county does apply and make an application to the Secretary of State's Office, asking for one or more or all precincts to be mail-in precincts. Because of the way this is drafted, the likelihood is that we'll be addressing maybe several precincts or a handful of precincts in each of those counties, but it's unlikely that any county is going to ask for all mail-in voting for all precincts of their counties. It's theoretically possible, but it's unlikely. What we're probably talking about is the most sparsely populated of the sparsely populated counties where we're dealing with 13, 15, 20, 30, 35 voters in those precincts that are very scattered and have to go some distances to a precinct site, in any event, and are more easily accommodated by mail-in voting.

SENATOR SCHIMEK: Thank you. Are there questions? Senator Burling has one and then Senator Wehrbein.

SENATOR BURLING: Thank you. Mr. Gale, you're very cooperative today; you're not against anything today; that's great. Do you know where the 7,000 population figure came from?

JOHN GALE: It's somewhat of an arbitrary number suggested by the drafter, the Bill Drafters, in trying to find a size of a county that would fit the sparsely populated definition where we would have a sizeable number of precincts that may not justify or warrant the expense of touchscreen equipment and some of the other equipment required by the federal law.

SENATOR BURLING: So you maybe do not have an opinion on whether or not that figure is too high or too low?

JOHN GALE: Well, we've reviewed it in my office, and our

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 43

opinion is that appears to be an appropriate number. I guess we're flexible on that. Whether we went to 6,000 or 8,000, the point is trying to address that large number of counties that are pretty much the hand-count counties now; they're counties that can't even afford optical scan equipment. They are not even current with what the other 85 percent of our voters are using in terms of modern equipment. In some 50 counties, they've been using paper balance and optical scan count equipment for 18 years, and there's some 40 counties that still today cannot afford that equipment. So there is a major cost factor, a fiscal impact factor, for those counties because even if we furnish them with this equipment, let's say that this bill isn't passed and we have to furnish that equipment to all of those counties for all of their precincts, that county is going to have the burden of the poll worker training, of the maintenance of the equipment, of the constant training to keep current on the equipment. So the equipment burden is not just the initial purchase. There's an ongoing requirement, as well, for them to stay on top of that technology or the equipment becomes worthless. So this relieves the county of that financial impact, as well as giving their voters a very equal opportunity to cast a ballot. We found in Washington, D.C., at our conference, that the mail-in states and the mail-in counties do tend to have a larger voter turnout, so that was a fair question, Senator Schimek. At the same time, these sparsely populated counties that fall within the 7,000 or less, are the counties that have the highest voter turnout in the whole state today, and traditionally do. They vote...they're voting in 75 to 85 percent in many of the counties in elections today. So they are counties where the people are dedicated voters and want to participate, and we want to be sure that they're able to cast their ballot and have the ballot counted. We just think this is maybe a more viable alternative without the counties having to incur ADA costs to keep their polling sites current and without having to incur the costs of the equipment, maintenance, and training.

SENATOR SCHIMEK: Senator Wehrbein.

SENATOR WEHRBEIN: Are there any mileage or time guidelines as far as access to a polling place, at either federal...? I guess it would be federal.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 44

JOHN GALE: I'm going to have to consult with Mr. Erickson. No, there are not. I guess it's probably...I think Senator Fischer talked about how some people may need to drive 30 miles to some of the polling sites today. You certainly wouldn't want it to be any greater than that, so probably you're talking something within a range of 25 or 30 miles in the sparsely populated counties. You're not ever going to encounter that in the more metro areas.

SENATOR WEHRBEIN: Right. Thank you.

SENATOR SCHIMEK: John, committee counsel just pointed out that Cherry County's population is 6,053 people, so that could be one of the reasons that that number was set at 7,000, because we were trying to be sure to include that.

JOHN GALE: Knowing the name of the sponsor of the bill and where she lives, that probably is appropriate.

SENATOR SCHIMEK: So she probably wouldn't want it to get down to 6,000. I'm just wondering to myself if there's a better guideline maybe than the actual population figure, and I'm not saying that that isn't a good one; that maybe is the best one. But I'm just wondering if, oh, pretty soon Burt County is going to come in and say, well, we're just 500 people more than that 7,000, and we've got a couple of sparse precincts; could we be included too? I'm just wondering if that, in the long run, might be the result of the passage of this, is that more and more counties will want to be included. And maybe a standard should be something like maybe Senator Wehrbein is suggesting, and there should be a mileage standard in there perhaps. I don't know. I was just tossing that out on the table.

JOHN GALE: Well, we certainly aren't opposed to that. We don't think this is the one and only standard that could be used, but it was one standard that's objective and impartial and not subjective and easily determined to know who falls under it. And since a significant number of those counties that are hand-count counties do fall under it, it seemed like a good place to start.

SENATOR SCHIMEK: All right. Okay, thank you very much.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 401  
and Veterans Affairs  
February 9, 2005  
Page 45

Seeing no further questions, we appreciate your being with us again today.

JOHN GALE: Thank you.

SENATOR SCHIMEK: We will now take more proponents of the bill.

SHERRY SCHWEITZER: (Exhibit 1) Good afternoon again. My name is Sherry Schweitzer. I am cochairman of the County Clerks, Registers of Deeds, and Election Commissioners Association. As Senator Fischer alluded, Nebraska is a very diverse state. LB 233 and LB 290, both probably would benefit larger counties. With a diverse state we also have diverse counties, and so maybe LB 401 might be a benefit to our smaller counties. There are people who live quite a distance away; in fact, 30 miles might be close. And I've had some county clerks tell me that they have people that have to drive 50 miles to go vote, and that is one way. We have some that complain about having to go from one side of town to the other maybe, but this is a real inconvenience. We try to save as much money as we can when it comes to elections, and this is one way that would help those counties. Having a receiving board probably costs, on the average, around \$500. Usually you have about five ladies or gentlemen sitting there. If you could do a mail-in precinct, I know of one that did some mail, had a mail-in levy override, and they had 25 in one precinct. So you can imagine the cost savings in precincts where instead of having a receiving board there, you would just mail them the ballots. So our association supports LB 401. Any questions?

SENATOR SCHIMEK: Senator Wehrbein.

SENATOR WEHRBEIN: I'm sorry. I missed your county.

SHERRY SCHWEITZER: I am the Seward County Clerk...

SENATOR WEHRBEIN: Oh, Seward County.

SHERRY SCHWEITZER: ...but I am testifying on behalf of the County Clerks Association.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401  
and Veterans Affairs  
February 9, 2005  
Page 46

SENATOR WEHRBEIN: Well, I was just thinking out loud, most counties in the state, roughly over history, have been 40 miles by 20 miles, except for exceptions, which there are quite a few. And I was just thinking...I don't know...I thought if you were a sparse county, you might give me a reasonable number. I don't know what a reasonable number is for access; whether it's an hour's drive. It depends on the geography. If you're on a one-lane Sandhill road, it takes twice as long, for example,...

SHERRY SCHWEITZER: That's right.

SENATOR WEHRBEIN: ...as it would on the interstate. So, I don't...if we polish this...I really like the idea. I'm not sure whether it needs polishing or not in terms of access, but obviously access is a big issue.

SHERRY SCHWEITZER: It is, and in one county there is only one populated town in that county.

SENATOR WEHRBEIN: Is that...?

SHERRY SCHWEITZER: So you have that problem there also with locating the polling place. We're looking basically at cost savings right now, and that would be a big benefit.

SENATOR WEHRBEIN: See, I'm seeing one of the emerging problems could well be, notwithstanding LB 126, could be having even a place to have a polling spot, because I don't know whether you can use a home or not. Do you know if we can use a home?

SHERRY SCHWEITZER: Well, I know where there is a polling place on private property, I would say, but generally you don't want to do that.

SENATOR MINES: It has to be ADA compliant.

SHERRY SCHWEITZER: Right. You have to be ADA compliant, things like that.

SENATOR WEHRBEIN: It could be a ranch house.

SHERRY SCHWEITZER: Even in a county such as Seward, I do

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 401  
and Veterans Affairs  
February 9, 2005  
Page 47

have a couple. I have one precinct that does not have a village in it; I have an unincorporated village that has an old schoolhouse, and although I do have 300 voters in that precinct and they do vote and have a pretty high voting history, but maintaining this small schoolhouse has been adventurous. Okay.

SENATOR WEHRBEIN: You probably could talk about that for an hour.

SHERRY SCHWEITZER: I sure could. I also have a letter from the Nebraska Association of County Officials I would like to have distributed. Thank you.

SENATOR SCHIMEK: Sherry, you don't have any places in your county that are sparse, do you? I mean...

SHERRY SCHWEITZER: In Seward County I have a population of 16,500 and, no, one of my smaller precincts have about 300 people in it. And so I don't deal quite with that, but you get to county clerks such as Tom Elliott, who is the Cherry County Clerk, deals with this problem ongoing.

SENATOR SCHIMEK: As you know, state law permits mail-in ballots for local kinds of elections that are noncandidate ballots.

SHERRY SCHWEITZER: Right.

SENATOR SCHIMEK: Eventually, I suspect we'll get there. We'll probably be there for all elections; I don't know that we're ready to do that yet. But that would solve everybody's problems, wouldn't it, in a way?

SHERRY SCHWEITZER: I would say so.

SENATOR SCHIMEK: It would be a lot cheaper?

SHERRY SCHWEITZER: Absolutely. I don't see, really, a detriment in it, right now. And you have asked about the disposition, whether or not that would lead some precincts to have a better odds, I guess, of voting. I don't really see that happening with our absentees up the way they are. Everyone knows it only just about takes a phone call to ask

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 401  
and Veterans Affairs  
February 9, 2005  
Page 48

for an absentee application. You can get them off the Internet; they're printed in the newspaper. I mean, there's just a real wide variety of a person being able to vote absentee, so this would just be, almost, just like that.

SENATOR SCHIMEK: I do know that once Oregon started the mail-in balloting, they did have a rise in their voter turnout. I don't know if that held or if that eventually dropped down to the normal rate or not. It would be kind of interesting to look at that again.

SHERRY SCHWEITZER: Yeah, I don't know that either.

SENATOR SCHIMEK: Senator Pahls has a question.

SENATOR PAHLS: Yeah, I have a question. Are there SIDs in your county?

SHERRY SCHWEITZER: Yes, I do.

SENATOR PAHLS: Because I've noticed like the SID that I was in before the city took us over, we had a really large number of people voted and we voted for the SID...

SHERRY SCHWEITZER: Trustees.

SENATOR PAHLS: ...trustees, yes, I mean...

SHERRY SCHWEITZER: Via mail.

SENATOR PAHLS: ...via mail. And we had a large...I mean, it's probably the size of some small towns.

SHERRY SCHWEITZER: Right. I have two SIDs currently, and they are not very large, but I do it by mail.

SENATOR SCHIMEK: Seeing no further questions, thank you for being with us.

SHERRY SCHWEITZER: Thank you.

SENATOR SCHIMEK: Are there other proponents to the bill? Any others who wish to testify in favor? Any in opposition to the bill? Any opposed? Any in a neutral capacity?



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 401, 473  
and Veterans Affairs  
February 9, 2005  
Page 49

Seeing none, Senator Fischer to close.

SENATOR FISCHER: (Exhibit 2) Thank you, Senator. Just a couple points. We like our paper ballots, and we're going to be sorry to lose them. Secondly,...and I am serious about that, too. Secondly, I do have a list here of the counties and the breakdown, where it is. So if I could have the page make copies and I will make that available to the members of the committee. And I thank you for your attention for this bill. Thank you.

SENATOR SCHIMEK: Thank you. Any questions? Seeing none, that will conclude the hearing. And we will...I think Senator Heidemann is in the room, and we will open the hearing on the next bill which is LB 473.

LB 473

SENATOR HEIDEMANN: Good afternoon, Chairman Schimek, members of the Government Committee. I am Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n. I represent the 1st District, and I am here before you today to introduce LB 473, a bill that changes some election laws. This bill was presented to me by John Gale, the Secretary of State. LB 473 repeals the ability to organize a political party by congressional district, county, or city. This legislation requires a statewide effort to organize. The bill, as amended, requires that third parties be required to poll at least 5 percent in one of the two previous elections. Currently, the statute requires that they poll at least 5 percent in the previous election. This legislation came about because of a situation that occurred in my district a few years ago. A son and his mother held a convention, created a party, and called it the Last Party, and ran for office. Under current statute, this is allowable. They did not poll the 5 percent, thus the party could not run on the next ballot. The way the law is currently written, every person in the state could potentially create their own party. This could result in extra costs for the counties because they would have to include these names on the ballot. This is not an empty compromise. While new parties have had some success in retaining their status--the Reform Party, in 1996; the Libertarian, in 1998; and the Nebraska

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 50

Party, in 2002--generally the parties have had some difficulty in meeting the 5 percent threshold. The congressional district process has been used by the Green Party. In 2002, the party was recognized in the 2nd Congressional district, and lost status for not having a candidate achieve the 5 percent threshold. Following, in 2003, the Green Party formed in the 1st Congressional district. Prior to the 2004 General Election, the party submitted enough signatures from the 2nd and 3rd Districts, and were granted statewide recognition. No third or minor party achieved the 5 percent threshold in 2004. In summary, this bill is a compromise for third parties. While this bill does not remove a political party's ability to form on a congressional district, county or city level, it provides an increased life span for these parties. Are there any questions?

SENATOR SCHIMEK: Are there questions? Senator Heidemann, welcome to the committee, by the way. This doesn't have anything to do with the statutes that... well, I don't know what I'm trying to ask here, but with the statutes that allow political parties in the state...I mean, this isn't the entire statutory framework for political parties in the state, is it? You probably don't know. I'm going to ask those that follow.

SENATOR HEIDEMANN: I think...yes, that would be a lot better.

SENATOR SCHIMEK: I'm a state of confusion here. Any questions? Seeing none, thank you very much for being with us today.

SENATOR HEIDEMANN: Thank you.

SENATOR SCHIMEK: We'll take proponents of the bill.

NEAL ERICKSON: Senator Schimek, members of the committee, for the record, Neal Erickson, Deputy Secretary of State for Elections, here testifying on behalf of the Secretary of State's Office in favor of LB 473. I thank Senator Heidemann for introducing this bill. This bill is actually a repeat of a bill that was introduced a couple years ago, and I think he described it accurately in terms of a

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 51

trade-off when it comes to addressing some of the issues with third parties. Currently, under Nebraska statute, parties may form on the city, county, congressional district, or statewide basis. These are old laws, to a degree. In fact, they actually precede us having voter registration on a statewide basis. They also precede...for example, we have city parties...precedes when cities went to a nonpartisan status. I mean, we only, right now, have one city left that elects their councilmen on a partisan basis, and that's Fremont. We did have Columbus and York, but both of those just in the past year have decided to elect theirs on a nonpartisan basis. What it would do, LB 473, would eliminate the ability of a political party to form on anything other than a statewide basis. In exchange for that, current law currently says that you have to receive 5 percent of the vote at the previous election in order to maintain that status. This bill would extend that to one of the two previous elections. So, in effect, it gives them a four-year life; it gives them four years to make that 5 percent threshold in an election. It's one of those...it's a compromise. It does take something away from those minor parties that might have used it. The Green Party, for example, has used the congressional district format in the past few years. On the other hand, it does give them something with the other hand, in terms of increasing that life for an additional couple of years, and not forcing them to go out and petition again to make the next election. With that, I would answer any questions you might have.

SENATOR SCHIMEK: Yes, Senator Mines has a question.

SENATOR MINES: Thank you, Madam Chair. I see that it's 5 percent of the vote in each of their respective districts. So that's 5 percent of each of the congressional districts, is that right? As opposed to 5 percent of the total voters in Nebraska?

NEAL ERICKSON: Yeah, and it depends...the current law depends on how they're organized. If they're organized on a congressional district basis, yes, they have to have 5 percent in that congressional district. If you had, let's say a Green Party that formed in two congressional districts, yeah, they'd have to have 5 percent in each one

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 473  
and Veterans Affairs  
February 9, 2005  
Page 52

those...

SENATOR MINES: Okay.

NEAL ERICKSON: ...to maintain that status.

SENATOR MINES: And you mentioned this was introduced several years ago?

NEAL ERICKSON: We actually introduced it two years ago. It did make it out of committee, but there were other issues on the floor of the Legislature, and it was killed upon sine die.

SENATOR MINES: Okay.

SENATOR SCHIMEK: Did you have a question, Senator? Neal, I'm sorry, my mind is gone today.

NEAL ERICKSON: A little bit of election material to talk about?

SENATOR SCHIMEK: What did we do with political party organizations? Did we take those out of the statutes entirely, as far as in how they do their conventions and all that kind of thing?

NEAL ERICKSON: No, there had been some talk about that, but we never did actually remove that.

SENATOR SCHIMEK: We never did it.

NEAL ERICKSON: Yeah, there was...

SENATOR SCHIMEK: But that's in another section, right?

NEAL ERICKSON: Yeah, that is actually in, I want to say Article VII of the statutes. This sections, these are...actually, they may be even in Article VI, but it's in some different areas there.

SENATOR SCHIMEK: This is mainly establishing viability; that's what it's all about.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 53

NEAL ERICKSON: Actually, let me correct. It is in Article VII. Yeah, this is...this establishes viability. Section 32-610 talks about when you're able to file, when there's going to be a ballot for that political party. And then if you look at Section 3, it repeals 32-718. That is the statute section that allows them to form on the congressional, county, or city party basis. In 1701 to 1720, you've got the convention stuff; you've got how they form a new party, what the petition numbers have to be, et cetera.

SENATOR SCHIMEK: Okay. I'm not quite as confused as I thought I was. Okay, seeing no further questions, thank you very much for being with us today.

NEAL ERICKSON: Thank you.

SENATOR SCHIMEK: Are there other proponents of the bill? Hi; welcome.

NYDRA KARLEN: (Exhibit 1) Hi, I have to get back to Bellevue to take my granddaughter for her horseback riding lesson, so I'm kind of...

SENATOR SCHIMEK: What time is that?

NYDRA KARLEN: What?

SENATOR SCHIMEK: What time is that?

NYDRA KARLEN: It's at 5:30 p.m.

SENATOR SCHIMEK: You'll make it.

NYDRA KARLEN: I think we'll make it. My name is Nydra Karlen. Am I speaking loud enough?

SENATOR SCHIMEK: Yes, you are.

NYDRA KARLEN: Because I just got new hearing aids, so I can't hear myself very well.

SENATOR SCHIMEK: Well, I was in the Executive Committee, and I was having trouble hearing you, but I can hear you

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 473  
and Veterans Affairs  
February 9, 2005  
Page 54

here.

NYDRA KARLEN:    Okay, great.

SENATOR SCHIMEK:    Would you spell your name, please?    I think...

NYDRA KARLEN:    My name is Nydra Karlen, N-y-d-r-a K-a-r-l-e-n.

SENATOR SCHIMEK:    And I think I failed to enforce that today.

NYDRA KARLEN:    And that's on the paper that I handed out. I'm the state chair of the Libertarian Party, and as the state chair, I can assure you that maintaining ballot access in Nebraska every two years is extremely difficult for third parties. To maintain access, much of our money is spent on unwinnable races, like U.S. Senate or U.S. congressional seats, just to garner our 5 percent. In years like 2004, with no statewide offices or senate seat on the ballot, the Democrats must also run in all three congressional districts for their 5 percent, and voters generally vote for the majority party of their choice, rather than throw away their vote on a third party. It's kind of interesting, I was in this same hearing room for the Help America Vote Act, and I testified about my first Libertarian ballot, actually going to...not being put in the box. I was disenfranchised before I knew what that word was. I voted on Jones Street; I think I was in Pam's group, Pam Brown's district at that time. And they said, no, the Libertarians don't go in the box; they go in this envelope and we set it over here. I said, I just can't believe this. But I testified in...my testimony appeared to kind of fall in the rabbit hole and I never heard another thing about it, and it certainly is no easier for Libertarians to vote for the person of their choice after that hearing. The way to build a party is to win elections at the local level and grow your candidates, but unfortunately that takes money too. Third parties have limited funds, and much is spent just to keep our ballot access current, leaving limited funds for candidates. Legislative Bill 473 relieves us from the two-year cycle of costs spent on unwinnable races and/or petitioning across the state. With tens of thousands spent on

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 55

petitioning...and by the way, the filing fees to run for U.S. House or Senator is 1 percent of their annual salary, which turns out to be like \$1,600, so if we want to run people in all three congressional districts, you know, we're talking \$4,500 right there that we have to raise just to get them on the ballot. And that seems very high. So we've got tens of thousands spent on petitioning, and it drains our coffers and discourages our members from contributing. For that reason, we are in favor of LB 473, and hope that it is advanced. I hope at some point Nebraska could step forward and pass Instant Runoff Voting like Australia and San Francisco currently have. I've also learned that LB 473 continues to require a certain number of signatures from each district of the three congressional districts. That is going to be very onerous, too, to go out into the third district and try to collect petitions. So, if any way that you could allow those petitions to just be statewide, rather than district wide, that would help us a lot, because it does cost us a lot. We want to be able to vote for our presidential candidate. We've been on 49 to 50 of the state ballots now for several years, and keeping our Libertarian Party on the ballot in Nebraska is very, very important to us, and that is why we spend all that money petitioning and spend all the money putting somebody in a slot that we know they can't win, like the Secretary of State. So if there's any way that you could help make this a little easier for us to vote, I think that would go along with the Help America Vote, because it's not much easier for me than it was. We are in favor, at this point, on LB 473, although if you could allow us to get those petitions filled statewide, it would help. Any questions?

SENATOR BROWN: Are there any questions? Thank you for joining us today. Any further testimony in support of LB 473?

BETH BAZYN FERRELL: Good afternoon, Senator Brown and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We're appearing in support of this bill today. We believe that it strikes a reasonable balance between ballot access and the additional efforts that are required by the election commissioner and county clerk to prepare

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 473  
and Veterans Affairs  
February 9, 2005  
Page 56

ballots, and so on, for these different political parties.  
Be happy to take any questions.

SENATOR BROWN: Are there any questions? Thank you. Any further testimony in support of LB 473?

GERALD KOSCH: Thank you, Senator Schimek and committee. My name is Gerry Kosch, spelled K-o-s-c-h. I am actually the vice chairman of the Nebraska Libertarian Party, and I am speaking in favor of this bill because of the hardship it does create for third parties. Our chairman, Nydra, just mentioned the extreme cost of petitioning of all three congressional districts, and also the cost of filing fees that drain our coffers. Because of the need, as it is now written, to have a requirement to get 5 percent in either the governor or the presidential race, it just...well, it's extremely costly and it takes up most of our money, coffers, you might say, to do the petition drives. And then so much time is taken up by these petition drives that we do not have...we cannot be out there building the party. And the Libertarian Party does have a viable platform that needs to be presented to the public. And I would appreciate it if you could pass this piece of legislation to extend the time limits or of the...from two to four years to extend the life as Neal Erickson had said, of the political parties, of the Libertarian Party. And also...well, that would be basically it. I know I would just mirror what Mr. Erickson has already said, so.

SENATOR BROWN: Thank you. Are there any questions? Thank you for testifying.

GERALD KOSCH: Thank you.

SENATOR BROWN: Any further testimony in support of LB 473? Any opposition to LB 473?

MARK ZIMMERMANN: (Exhibit 2) Good afternoon. My name is Mark Zimmermann, Z-i-m-m-e-r-m-a-n-n. I live in Omaha in Senator Brown's district, and I'm here on behalf of the Green Party of Nebraska in opposition to LB 473 as it's written. And we say as it's written because we have some concerns, but we understand some things about the bill, too, and we hope that we can all work together to resolve them.



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 57

Our organization here in Nebraska began five years ago, in 2000, with a petition drive to put Ralph Nader's name on the ballot. We received about 24,500 votes that year, which was 4 percent. And while this was ten times more than any other third parties, it was short of the 5 percent we needed to retain ballot status. So that means in 2002 we petitioned again, and regained ballot status just in the 1st and 2nd Congressional districts, and we ran a candidate for the House seat in District 2, but again, didn't get the 5 percent. So we did have a couple candidates in a nonpartisan race though, that year, that got about 19 and 21 percent. We petitioned again in 2004; got ballot status in all three congressional districts, as Mr. Erickson said. The 1st District finished their petitions in 2003, I believe; the other two were done in 2004, shortly before the deadline. So since we didn't get 5 percent for our presidential candidate the last election, or in any of the House races, we're again without ballot status, and we have to petition once more. Nationally, there are about 200 Greens elected to public office, mostly to local offices around the country--city councils, school boards, and, oh, like, natural resources districts. I'll be the first to admit that we're a fledgling party here in the state and perhaps ahead of our time in some ways, but we're sincere about being a legitimate party. We want to stay around. We want to reach out to all parts of the state, and we're determined to do that. Mr. Erickson informed you about the origins of this bill and the incident in Johnson County with the, I think it was called the Last Party, sort of the ersatz political party down there. We agree that this was sort of an abuse of the system and that we're not opposed to preventing such occurrences in the future. We understand some of the need for the impetus, some of the need for perhaps a bill like this, but we still have other concerns that I'll relate. We do support, of course, the clause that allows two election cycles; allows, in other words, a four-year life span for new parties that are trying to make their way into the system and get known by the public. We originally had some concerns about the language, but I talked to Mr. Erickson again this morning about that, and I think most of our concerns have been relieved about that. Other than that, a two-cycle window would make good sense for third parties, in general, that are trying to start. And we think it would also help county election officials

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 58

that have to process these every two years and creates more work for them. As far as our suggestions regarding the bill, the first one, I guess, involves the scope of the problem and this bill's response to it. We feel it's a legitimate question to ask if this bogus party in Johnson County was an isolated instance or if this has ever happened before. As far as we know, this was the only time this has ever happened. As far as we know, this has never happened in a districtwide race, and we're wondering if maybe the problem could be solved just by eliminating county and city parties, but still allowing them on a districtwide basis; we would certainly be supportive of that. We've primarily evolved along districtwide lines because that's how our petition requirements are currently set in the law, that we have to collect so many petition signatures per district to gain ballot status. Another reason I guess we're organized that way is because we simply don't have any more volunteers than that, so it's unlikely that we would ever organize on anything less than a districtwide basis. This gets us kind of to the crux of the whole problem though. Being a new party, we're only going to be able to enter a limited number of races for the foreseeable future. Passage of this bill therefore requires us to go out and seek support in parts of the state where we might not even actually have a candidate. At a district level, perhaps this makes some sense, you know, if we're running, say, for...well, I know it's a nonpartisan race, but say we're running for a county race here in Lincoln. You know, it would make a certain amount of sense that we go out even to the surrounding area, it's not as tough, but to have to go, say, out to second and third districts for, it would be a local race, is a little tougher and more time consuming. We don't have the tens of thousands of dollars to spend on it that the Libertarians do, but from experience we spend a lot, a lot of time. If the committee does decide to move this bill to the floor, there's one other suggestion which we'd like you to consider. If districtwide parties are eliminated, we feel it's only fair and logical to consider replacing the district level signature requirements with a statewide one, which is what the Libertarian person just mentioned, as well. Again, we're not asking that the total number of signatures be reduced in this, just that we can collect them from across the state without district quotas. It's certainly our goal and in our best interest as a party

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 473  
and Veterans Affairs  
February 9, 2005  
Page 59

to grow and organize across the state, and we certainly plan on doing that. We're not trying to just, you know, ignore parts of the state, but it certainly would ease some of the hardships of trying to run a race here but have to collect from everywhere. If not total statewide signature requirements, perhaps a compromise could be considered. And, right now, the way the requirement works is that we have to get 1 percent of the votes cast in the previous governor's race as a signature requirement in each congressional district. That's how many signatures we have to get to be placed on the ballot as a new party. Perhaps something could be arranged where maybe 1.5 percent from two out of the three, you know. I mean, we're willing to be open to some compromise on this. But it's just a little tough sometimes to go statewide, although we do hope to get it that way eventually. If we could come to some sort of compromise on the signatures, I think we could probably get support from the Green Party for this, because the four-year cycle that they're offering us is a good deal from our point of view. We understand that that's something that they're offering, and, in fact, if you wanted to consider that on its own merits, we'd certainly not stop you from doing that. But we're again a little bit on the fence about it yet, but close, and understand some of the Secretary of State's arguments on it. Just in closing, third parties had a long and distinguished record in our country. They've helped bring about the end of slavery and women's right to vote. Being less affected by money and tradition, they bring fresh perspectives and new choices to political debate. They involve citizens in civic life that might not otherwise be involved, myself included. We understand the need to make sure that all parties on the ballot are legitimate, but we also know that new parties, such as the Green Party, start small, and we need some time and some flexibility to grow in a volunteer-driven manner, rather than in just a money-driven manner. So thank you for listening, and if I can answer any questions, I will.

SENATOR BROWN: Are there any questions? Thank you for testifying. Any further testimony in opposition?

TROY WENTZ: My name is Troy, T-r-o-y. I'm a citizen of Nebraska. I'm the person who started the Last Party, and so I'm in opposition of crossing out lines 10 through 12

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 473  
and Veterans Affairs  
February 9, 2005  
Page 60

because I believe if you leave these lines in place, it will continue to allow more people to be involved in the participation and in the politics of Nebraska. So if you want to cross out these lines, have a smaller group of people involved and get further away from a republic of the people for convenience, that is your choice, but I feel it would not benefit Nebraska's future. And listening to the last gentleman speak how this is a bogus...how it was bogus...it was just like, it is amazing how people who have no idea what was involved can give their opinion on something. The reason I did it is because I read through the laws and I found out that I only needed to get 21 signatures to run for county assessor instead of having the statewide percent, so it allowed someone who doesn't have a lot of money to be involved in politics. And, I mean, with the property tax system in the state, I mean it's forcing small farmers out of business and forcing them off the land, and so that's why I ran for county assessor, to change things. So I became a certified county assessor and I went through all that process, and again I say, if you eliminate lines 10 through 12, you won't allow the humble, working class to be involved in the politics.

SENATOR BROWN: Sir, can you give us your full name? It's for the public record, and we need your full name.

TROY WENTZ: I just go by my first name. Do I need to give my...

SENATOR BROWN: Is that your legal name?

TROY WENTZ: No, that's not my legal name.

SENATOR BROWN: If you could, for the public record?

TROY WENTZ: Wentz, W-e n-t-z.

SENATOR BROWN: Thank you. Are there any questions? Thank you. Any further testimony in opposition?

TOM MCCORMICK: My name is Tom McCormick. I'm a citizen of Nebraska and I'm appearing on my own behalf. I think whenever we talk about a piece of legislation, especially one that's going to make a radical change in the election

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 61

laws, we should think what are the advantages and what are the disadvantages of it. Now this bill, the bottom line is this bill would make it more of a hassle for newer parties to qualify for the ballot. Now those of my Libertarian friends who are aware of the fact that while eliminating district parties, the bill does not eliminate the district quota for signatures statewide, have a lot of ambivalence in their mind as to whether this is a good bill. And this is a part of the bill that a lot of people are not aware of. I've told this to third-party advocates, and they always say...and many of them have said, oh, really, is that in the bill? One of the two Libertarian testifiers today was not aware of that until I pointed it out. And I think that the more people are aware that this more or less allows the two big parties to have their cake and eat it as well, the more are opposed to it. Now this is the sort of thing which does, in fact, make it easier in the sense that to qualify, in that you have a two-election cycle instead of a one-election cycle. But that only is an advantage to the person trying to organize the campaign, if they are already organized statewide. I submit that the only merits to this is that, as has been pointed out, it lessens the paperwork for the county clerks and the Secretary of State's Office, if that is an advantage. But ladies and gentlemen, democracy is a very messy business. That's what we have election officials and Secretary of State's offices for, is to handle the inherent messiness of democracy. And I glory in the messiness of democracy, and that's what I pay my public officials for. And if it be of merit, which I don't think it is, it also makes the two major parties, the two big parties, the two great big parties, sit back a little bit easier because they don't have to worry about wild cards. That is an out-and-out loss for democracy. I submit, the situation in this country conspires against any candidate of a party other than the two great big ones, and that is a positive evil in and of itself. Senator Schimek, you remember our hearing earlier today. People argued on the other side of the bill from me, that this particular bill is bad because it will discourage competition. Everybody thinks it's good to have more than one, more than two, as many as possible, people in the marketplace of ideas. But people have, especially election officials, have a real blind spot when it comes to how many parties we ought to have. And as Mr. Zimmermann pointed out, it is newer,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473  
and Veterans Affairs  
February 9, 2005  
Page 62

smaller parties that have almost always been the salvation of this country. That is what changed abolitionist movement from a fringe to mainstream; ditto, woman's suffrage; ditto, the right of workers to organize; ditto, social security and the whole idea of a safety net. And in this day and age, with the consolidation of media ownership and all the rest of it, we really can't afford to limit the marketplace of ideas to just two merchants. And there's one other reason why this bill should be opposed. This bill, as I said, allows no parties by district. If a new party is operating in Lancaster County, starts out in Lancaster County and is not yet statewide, has issues of interest to Lancaster County to demand that it also have obtained ballot status in Douglas County and Deuel County, and all the rest of it, is an out-and-out loss. I think that is an out-and-out subversion of democracy. We shouldn't be concerned with making things easier for the parties that are already in place, already decide who is going to be on presidential debates, and not only on the federal level, but on the state and the local level. Frequently are able to decide what congressional candidates and what county board candidates are going to be included in debates on the basis of their party label and not in the basis of how many people even support them. We have a federal court system that has consistently backed up, the decisions by private individuals to exclude people for not being Democrats and Republicans. We do not need to add to this restriction. We need to pursue the venerable tradition of this country to allow people to organize whatever political parties they wish, and to give people the right to see their own candidate on the ballot on the same basis as Democrats and Republicans if they can get enough people supporting them. As I say, this bill does allow the major parties to have their cake and eat it, as well. We can only organize statewide. We have to start out statewide. We cannot start out local and become statewide and be on the ballot for the whole process. But on the other hand, we have to still get signatures, quota-based, in each district. This might be logical if, for example, you couldn't get elected governor of Nebraska without getting a certain number of votes in each district, which would be absurd. And by the same token, this is absurd. It is unjust; it is undemocratic; and it's a subversion of the free election process. And all it really does is save a lot of paperwork for people whom we pay to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 473, 477  
and Veterans Affairs  
February 9, 2005  
Page 63

take care of the paperwork of democracy. I think it's really an outrage that a bill like this is even being considered by this body. And I think that you should vote it down and not advance it to the floor.

SENATOR BROWN: Are there any questions? Seeing none, thank you. Any further testimony in opposition? Any neutral testimony on LB 473? Senator Heidemann.

SENATOR HEIDEMANN: Thank you so much for your time this afternoon. The only thing that I might want to add is, we don't find it an abuse that Mr. Wentz actually created his Last Party. And when they brought me this legislation, I almost had to admire him that he was able to do this under the law. So we didn't consider that an abuse, and I just wanted to state that. Thank you very much.

SENATOR BROWN: Any questions? Thank you. That will conclude the hearing on LB 473 and we will start the hearing on LB 477.

LB 477

SENATOR SCHIMEK: Thank you, Madam Chairman and members of the Government, Military and Veterans Affairs Committee. You can see this is not going to be a long hearing because we've just almost cleared out the room here. For the record, I'm DiAnna Schimek, District 27, here to introduce LB 477, which is a mechanism for allowing somebody with a destroyed, spoiled, or lost absentee ballot to vote. And with this bill, somebody with that kind of a ballot has the choice of voting provisionally on election day, or obtaining a replacement absentee ballot. The person requesting the replacement absentee ballot must sign an oath and deliver the statement to the election commissioner or county clerk in order to receive the replacement ballot. If a person decides to vote on election day, the voter will be allowed to vote by a provisional ballot. Now, just today, it was recommended to me by the committee counsel that we might want to look at the language. I think it's in Section... It's on page 4; it's the second paragraph there. And she, after speaking with the Bill Drafter's Office, is recommending that maybe we might want to strike paragraph 2,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 477  
and Veterans Affairs  
February 9, 2005  
Page 64

which is, if the voter casts more than one absentee ballot at the same election, or casts both an absentee and a provisional ballot at the same election, this voter's ballot shall not be counted. Probably, upon reflection, one of those ballots should be counted. So, I mean, you don't really know what the circumstance is. I mean, this could be, for instance, an elderly person who's simply forgotten they cast their ballot, perhaps already their absentee ballot. They come to the polling place, ask for provisional, so that's what I'm going to suggest, that we may want to amend the bill.

SENATOR BROWN: Thank you. Senator Wehrbein.

SENATOR WEHRBEIN: You're assuming that that's not intentional then.

SENATOR SCHIMEK: Yes. And how do you know whether it's intentional or not? I think that's the problem probably?

SENATOR WEHRBEIN: Hum. Okay, I'll think about that.

SENATOR SCHIMEK: I mean, it would be...

SENATOR WEHRBEIN: I thought that was in there to...I assume there...

SENATOR SCHIMEK: ...it would be caught.

SENATOR WEHRBEIN: Chicanery.

SENATOR SCHIMEK: No.

SENATOR WEHRBEIN: ...but you're not...

SENATOR SCHIMEK: It would be caught, yes.

SENATOR BROWN: Senator Mines.

SENATOR MINES: Thank you, Senator Brown. Senator Schimek, is this a big problem? I mean, is this an issue that comes up quite often?

SENATOR SCHIMEK: No, because we haven't really had



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 477  
and Veterans Affairs  
February 9, 2005  
Page 65

provisional ballots that long.

SENATOR MINES: Yeah.

SENATOR SCHIMEK: Is the Secretary of State's Office here, still? I'm going to let them explain that to you.

SENATOR MINES: Okay.

SENATOR SCHIMEK: And I haven't even discussed with the Secretary of State's Office that possible amendment, and they may have a different view on it. I did bring it on behalf of the Secretary of State, as I recall. No, we did that on our own, okay. I did that on my own.

SENATOR MINES: Congratulations.

SENATOR WEHRBEIN: Senator Schimek, you have too many bills.

SENATOR SCHIMEK: Too many bills. You're right. (Laugh)  
Okay.

SENATOR BROWN: Any further questions? Thank you.

SENATOR SCHIMEK: Thank you.

SENATOR BROWN: Anyone wishing to testify in support of LB 477?

SENATOR FISCHER: You did this on your own.

SENATOR BROWN: Any in opposition? Neutral testimony?

NEAL ERICKSON: Senator Brown, members of the committee, this is one of those pieces of legislation that, yeah, we had a hand in drafting, and because where it came from, the original idea came from, it's not something we could really come out and support fully, but it is an idea that I think will be a valid tool in some areas. For example, we had a situation in Cass County this year where a number of voters did not get provisional ballots in a timely manner. And by allowing them to vote provisional in the polling place it would have allowed their vote to be cast. You know, we had claims...we had an awful lot of absentee ballots last year

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 477  
and Veterans Affairs  
February 9, 2005  
Page 66

on the 2004 election, and we had a number of people who said they didn't get them, or whatever. This provides, under current law, they're capable of going to the clerk or commissioner's office and getting a ballot after signing a statement they had not received it or had misplaced it or had spoiled it. This provides a little more convenient access for them to actually do it at the polling place. We don't think it provides that much of an administrative burden to the local officials or to handle this, because they're already used to handling provisional ballots. Senator Schimek, we had not discussed the paragraph 2 on page 4, and actually the reason we're testifying today is to say that we probably should remove that also, but for a completely different reason. When this was drafted, the idea behind it was, when somebody casts an absentee ballot they, under oath, under penalty of a felony, say this is the only way I will cast a ballot. They also similarly do that when they cast a provisional ballot. So if they've cast both an absentee ballot and a provisional ballot, they have outright committed a felony. And there was some question about if they've committed a felony, should we be counting either of their ballots? Well, after looking at this a little bit closer, what we discovered was, it was going to be an administrative problem. The absentee ballots are generally counted on election day, where provisional ballots are counted after the fact. So there was going to be no way to match up that provisional and that absentee unless we held off counting the absentee ballots, which we don't want to do; that's not going to be conducive to getting some accurate results out quickly. Certainly, they still will, if somebody casts both an absentee ballot and a provisional ballot, we would try and pursue them for falsely swearing on the documents they had signed. But it is a probable situation the absentee ballot would have already been counted and there would be no way at that point in time to pull it back out. If we discovered they had voted previously under normal provisional balloting rules, we would not count that ballot. So we would only end up with one ballot being counted. But like I said, initially the idea was, should we give somebody who we know committed a crime, the benefit of casting a ballot at all? And I don't know. If you have any other questions, that's pretty much our position on the bill, and we don't think it will create some administrative burdens. It's a viable alternative to

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military            LB 477  
and Veterans Affairs  
February 9, 2005  
Page 67

deal with some problems in the delivery of absentee ballots, and we would encourage you to advance this to the floor with that amendment.

SENATOR BROWN: Are there any questions? Thank you.

NEAL ERICKSON: Thanks.

SENATOR BROWN: Oh, Senator Fischer, I'm sorry. Neal?

NEAL ERICKSON: Yes.

SENATOR BROWN: Senator Fischer has a question.

SENATOR FISCHER: You don't see a problem with voter fraud, then, with this bill?

NEAL ERICKSON: On this, when we talk about voter fraud, as an election administrator we recognize we cannot prevent voter fraud. No matter how tight we write these laws, we can write them till we're blue in the face, and there are going to be finding somebody who finds a way around them. What we rely on instead is, number one, our ability to detect it when it occurs; try and make it inconvenient for them to do so, and then prosecute them when we discover it. And those are the big tools we use to prevent fraud. In terms of writing this stuff so tight that we can outright prevent it, it's not realistic to expect that. We rely on those three prongs: instead, make it inconvenient; being able to detect it; and then prosecuting it afterwards.

SENATOR FISCHER: Do you usually detect it after the fact?

NEAL ERICKSON: Generally, yeah. The checks and balances that are in place, we're able to do that. In this case, you'd be able to compare your provisional ballots against those ballots that had previously been cast.

SENATOR FISCHER: Okay, thank you.

SENATOR BROWN: Any further questions? Thank you.

NEAL ERICKSON: Thanks.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 477  
and Veterans Affairs  
February 9, 2005  
Page 68

SENATOR BROWN: Any further neutral testimony on LB 477?

SHERRY SCHWEITZER: Good afternoon once again. My name is Sherry Schweitzer. I'm the cochairman for the County Clerks, Registers of Deeds, and Election Commissioners. I really wanted to support this bill, but missed my cue; I'm sorry. We realize that a ballot does get lost in the mail, just like anybody that has mail that gets lost now and then. We realize it can get lost or stolen, and in cases there have been questions where, what do we do? There is nothing really written in statute that says, go ahead and issue a new one. This last time I had a person from...that was stationed in Iraq. I sent an absentee ballot as he had requested, and lo and behold, he had an emergency and so he was able to come home. Well, my ballot made it to Iraq, and he made it back to Seward County, Nebraska, and they bypassed each other. Somehow, I issued one only because I knew that that had, what the circumstances was. I made sure the other ballot was not counted, and we kind of more or less made good on him being able to cast a ballot. Right now, the bill states that if it is lost, this person can go to the polls and vote a provisional. We would like to see just a little bit of different language in there, so that the person, if they do go to the polls and their name is marked that they have voted absentee, that this person be directed to come to the courthouse to vote. We could handle the situation better. If there's one rule we've told our receiving boards over and over is, if you voted once, that's all you get. And if their poll books are marked absentee, they don't get to vote again. If that person's ballot were lost or stolen and they did say, I've never received it, for instance, let them come up to the courthouse. We can check our records. We may have received it back in the mail; we may be holding it. We usually try to contact the person, but it has happened. They've moved in between time within the same district, and are allowed to vote on a provisional ballot basis then. But there has been a glitch now and then, and we have had a ballot waiting there for them. The receiving board ladies don't know this. We may have, in an elderly person who applied for an absentee ballot, and then everyone was going to vote on election day, and so they decided to go along with all their friends. And I guess if that person were to come up to the courthouse, we'd say, we have your ballot here, and we probably could show it in the

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Government, Military      LB 477  
and Veterans Affairs  
February 9, 2005  
Page 69

envelope it was received back in. So that's kind of the main reason we would request that it be brought back to the...the voter be told to come to the courthouse so that we can kind of investigate it just somewhat; not let them vote twice if they have already voted before. We did have a question, as Neal stated, with the not voting the ballot, but that seems to have been taken care of. So that's all I have to say. If you have any questions?

SENATOR BROWN: Yes, Senator Wehrbein.

SENATOR WEHRBEIN: Can you do that, ask them to come to the courthouse, and...I mean, you couldn't be challenged by a voter?

SHERRY SCHWEITZER: Right now, there is nothing in the law, so we haven't had to. But, I mean, if you want to vote, for instance there is a part of the law that states if you are a new resident voter, and even though you are not able to get registered because you moved into the precinct at the last moment, you can vote for president only, and you have to do that at the courthouse.

SENATOR WEHRBEIN: Okay.

SHERRY SCHWEITZER: So that's one instance.

SENATOR WEHRBEIN: It's good, common sense. I don't have any problem with it, but I just wondered if you could be challenged.

SENATOR BROWN: Any further questions? Thank you.

SHERRY SCHWEITZER: Thank you.

SENATOR BROWN: Any further neutral testimony on LB 477? Senator Schimek waives closing, and that will close our hearings for today.